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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT ARMIJO,

Plaintiff,

vs.

OZONE NETWORKS, INC. d/b/a OPENSEA, a
New York Corporation; YUGA LABS, INC. f/k/a
YUGA LABS, LLC d/b/a BORED APE YACHT
CLUB, a Delaware corporation; LOOKSRARE;
and DOES 1 to 50,

Defendants.

Case No.: 3:22-cv-00112-MMD-CLB

FIRST AMENDED COMPLAINT

Plaintiff, Robert Armijo, by and through his counsel, Armstrong Teasdale LLP, hereby makes his First Amended Complaint against Defendants Ozone Networks, Inc. d/b/a OpenSea (“OpenSea”), Yuga Labs, Inc. f/k/a Yuga Labs, LLC d/b/a Bored Ape Yacht Club (“BAYC”), LooksRare, and Does 1-50, and alleges as follows:

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NATURE OF THE ACTION

1
2 1. This action arises out of Defendants OpenSea and LooksRare’s failure to implement
3 common sense and reasonable security measures to prevent the foreseeable fraud and sale of stolen
4 non-fungible tokens (“NFTs”) on their online NFT marketplaces. The lawsuit also arises from
5 Defendant BAYC’s failure to monitor its proprietary and exclusive ape club in order to deny entry to
6 individuals whose access is predicated on a stolen BAYC NFT. In doing so, BAYC wrongfully
7 denies lawful club members the benefits of membership for which they paid. Defendants have taken
8 advantage of the unregulated digital asset market and have profited enormously from the sale of
9 stolen NFTs, including the NFTs that were stolen from Plaintiff, Robert Armijo.

10 2. NFTs are uniquely identifiable digital assets whose authenticity has been certified on a
11 blockchain, the transparent and secure digital ledgers that support the creation of many forms of
12 digital assets, including NFTs and cryptocurrencies. Specifically, NFTs represent and track the
13 ownership of nearly any real or intangible property in digital form, including works of art, images,
14 music files, videos, virtual sports cards, physical objects, memberships, and countless other
15 developing use cases. Unlike regular cryptocurrencies or fiat money, NFTs cannot be mutually
16 exchanged for one another because each NFT has a specific value based on its unique traits and
17 attributes.

18 3. NFT marketplaces, such as OpenSea and LooksRare, are virtual exchanges that allow
19 digital collectors, to buy, sell, swap, and create NFTs. Similar to Amazon and eBay, which provide
20 online marketplaces for traditional physical goods, NFT marketplaces provide an online platform for
21 buyers and sellers to meet and exchange digital goods. Due to their unregulated nature, NFT
22 marketplaces do not apply any anti-money laundering or Know Your Customer standards.
23 Individuals or bots (computer programs that are programmed to simulate human activity) can create
24 multiple accounts using fake names and addresses with impunity, allowing criminals to capitalize on
25 the anonymity of the Internet and the failure of NFT marketplaces to verify user information.

26 4. Whenever an NFT changes hands, the blockchain technology underlying the NFT
27 creates a public record of the transaction on its digital ledger. The record includes the details
28 regarding the specific NFT involved in the transaction and the identities of the digital wallets (the

software-based system used to hold the NFTs) utilized to transfer the NFT. The record does not include the names or identities of the owners of the specific NFTs or digital wallets involved. Because blockchain technology is decentralized and spread across thousands of computer nodes at various locations, individual NFT marketplaces do not have the ability to undo a transaction once it has been completed on the blockchain—it becomes permanent and irreversible.

5. Beginning in February 2021, NFTs exploded in popularity with NFT marketplaces conducting a minimum of \$44.2 *billion* worth of transactions in NFT sales in 2021, up from just \$106 million in 2020.¹ This incredible growth—combined with extremely valuable individual NFTs, weak security infrastructure, a largely unregulated market, and no recourse for victims to retrieve their stolen property—has made NFT creators and owners natural targets for thieves. Even the savviest NFT owners can lose millions of dollars in a matter of seconds if they fall victim to a scam or a hack. NFT marketplaces, which provide the platforms for secondary sales of stolen NFTs, and creators/developers in the NFT space, like BAYC who control the entry requirements to become a member in their club, have done little to deter fraudulent activity on their platforms. Rather, they have created a system where thieves can act without fear of retribution or consequences. And, all the while, the NFT marketplaces and BAYC profit off of each fraudulent transaction because they are entitled to a commission/royalty for each secondary sale. Indeed, crypto crime, of which stolen NFT transactions are included, accounted for a record-setting \$14 billion worth of blockchain transactions in 2021.²

6. Certain NFT projects have become so popular that their value has increased exponentially, and market watchers have labeled several of these projects as blue-chip investments, including the Bored Ape Yacht Club.³ Bored Ape NFTs are an exclusive collection of 10,000 original

¹ See Chainalysis Team, *Crime and NFTs: Chainalysis Detects Significant Wash Trading and Some Money Laundering in This Emerging Asset Class*, CHAINANLYSIS (Feb. 2, 2022), <https://blog.chainalysis.com/reports/2022-crypto-crime-report-preview-nft-wash-trading-money-laundering/>.

² See Cheyenne Ligon, *Crypto Crime Hit All-Time High of \$14B in 2021 As Prices Climbed: Chainalysis*, COINDESK (Jan. 6, 2022), <https://www.coindesk.com/tech/2022/01/06/crypto-crime-hit-an-all-time-high-of-14b-in-2021-as-prices-climbed-chainalysis/>.

³ See Yashu Gola, *Bored Ape Yacht Club Is a Huge Mainstream Hit, but Is Wall Street Ready for*

digital art images of apathetic-looking apes, each with their own unique characteristics and properties—varying fur types, clothing, accessories, facial expressions, and more. Bored Ape NFTs are currently the most popular and one of the most expensive NFT collections in the world. Although prices for Bored Ape NFTs fluctuate along with the broader cryptocurrency markets, as of January 2022,⁴ the floor price to buy the cheapest Bored Ape NFT was more than \$280,000, rising to an all-time high of \$429,000 as recently as April 2022.⁵ The collection also has a market capitalization of \$2.8 billion.⁶

7. BAYC created, developed, and initially sold the BAYC NFTs. Unlike many NFT collections though, BAYC’s business model is not predicated on just selling the NFTs it creates; rather, the success of BAYC’s business model is its creation of an exclusive ape club “where the token itself doubles as your membership to a swamp club for apes.”⁷ In other words, the key to membership into the exclusive BAYC club “whose benefits and offerings will increase over time” (and have in fact increased to many off-line tangible benefits) is ownership of a BAYC NFT (or affiliate NFT).⁸ “Your Bored Ape can serve as your digital identity, and open digital doors for you.”⁹ Due to their valuableness, BAYC NFTs have become a frequent target of hackers, scammers, and thieves.

8. OpenSea, recently valued at \$13.3 billion,¹⁰ is the largest NFT marketplace in the world and commands more than 97% of the emerging NFT market.¹¹ OpenSea recognizes its duty as

NFTs?, COINTELEGRAPH (Jan. 8, 2022), <https://cointelegraph.com/news/bored-ape-yacht-club-is-a-huge-mainstream-hit-but-is-wall-street-ready-for-nfts>.

⁴ Katie Notopoulos, *We Found the Real Names of Bored Ape Yacht Club’s Pseudonymous Founders*, BUZZFEED NEWS (Feb. 4, 2022), <https://www.buzzfeednews.com/article/katienotopoulos/bored-ape-nft-founder-identity>.

⁵ Shalini Nagarajan, *Bored Ape Yacht Club NFT Prices Slump Along with Market*, BLOCKWORKS (June 14, 2022, 6:01 AM EDT), <https://blockworks.co/bored-ape-yacht-club-nft-prices-slump-along-with-market/>.

⁶ See Notopoulos, *supra* note 4.

⁷ Bored Ape Yacht Club, <https://boredapeyachtclub.com/#/> (last visited June 24, 2022).

⁸ Bored Ape Yacht Club, <https://boredapeyachtclub.com/#/home> (last visited June 24, 2022).

⁹ *Id.*

¹⁰ See Eliza Haverstock, *The First NFT Billionaires: OpenSea Founders Each Worth Billions After*

an NFT community leader to create standards for the industry that keep consumers safe, as evidenced by several recent blog posts focusing on safety and security on OpenSea’s website.¹² However, the safety programs currently (and belatedly) being put in place on the OpenSea platform involve high-level technological measures that focus on stopping complicated computer hacking and malicious software attacks. The safety programs do not include any mechanisms that protect consumers from less sophisticated scamming and phishing schemes that rob owners of their NFTs and allow the thieves to use OpenSea as an immediate marketplace to offload the stolen goods. OpenSea instead puts all the onus on consumers, focusing on community education to teach users about the benefits and “unique pitfalls” that come with buying and selling NFTs.¹³ In one memorable recommendation, OpenSea encourages consumers to use an “air-gapped” computer when viewing their digital wallets to achieve the highest level of security.¹⁴ An air-gapped computer is one that has never been connected to the internet, and the use of such computers is a security technique utilized by, for example, government officials dealing with sensitive national security information at the Department of Defense.¹⁵

New Fundraising, FORBES (Jan. 5, 2022), <https://www.forbes.com/sites/elizahaverstock/2022/01/05/nft-billionaires-opensea-founders-each-worth-billions-following-latest-funding-round/?sh=44acd584f9be>.

¹¹ Tim Fries, *How OpenSea Captured 97% of the NFT Market*, THE TOKENIST (Nov. 11, 2021), <https://tokenist.com/how-opensea-captured-97-of-the-nft-market/>.

¹² See, e.g., Alex Atallah, *Important Updates for Listing and Delisting Your NFTs*, OPENSEA BLOG (Jan. 26, 2022), <https://opensea.io/blog/safety-security/important-updates-for-listing-and-delisting-your-nfts/>; Alex Atallah, *Introducing the NFT Security Group*, OPENSEA BLOG (Jan. 17, 2022), <https://opensea.io/blog/safety-security/introducing-the-nft-security-group/>.

¹³ *Id.*

¹⁴ See Hamish Barnes, *10 Tips for Avoiding Scams and Staying Safe on the Decentralized Web*, OPENSEA BLOG (Oct. 4, 2021), <https://opensea.io/blog/guides/10-tips-for-avoiding-scams-and-staying-safe-on-the-decentralized-web/>.

¹⁵ See, e.g., Claudio Buttice, *What Does Air Gap Mean?*, TECHOPEDIA (last updated June 10, 2021), <https://www.techopedia.com/definition/17037/air-gap> (citing typical examples of air gapped computers and systems, including “life-critical power plant controls, military and aviation computers, government networks, financial computer systems or computerized medical equipment”).

9. LooksRare disclaims all responsibility for consumer safety. In response to users who attempt to alert LooksRare to potential scams through its customer service channel, LooksRare states that as a “decentralized protocol” it will not freeze or remove assets, collections, or user accounts from its exchange. Instead, consumers are told “to always ensure you are buying what you intended to.” LooksRare, which has only been in operation since January 2022 and generated more than \$9.5 billion in trading volume in its first three weeks, explains that it is “looking to set the new industry standard for NFT marketplaces.”¹⁶ That standard does not include any consumer protections or monitoring of the LooksRare marketplace for stolen NFTs.

10. All three defendants employ a simple method for earning profits from the sale of NFTs:

- OpenSea receives a 2.5% cut of each transaction that occurs on its platform;¹⁷
- LooksRare receives a 2% cut of each transaction on its platform;¹⁸ and
- BAYC receives a 2.5% royalty fee for each secondary sale of its Bored Ape and Mutant Ape NFT creations.¹⁹

OpenSea and LooksRare, therefore, have an incentive to allow NFTs to be bought and sold as many times as possible because they only profit so long as transactions (legitimate or illegitimate) are happening on their marketplaces. Similarly, BAYC is incentivized to allow as many sales of its NFT creations as possible because it profits from every sale no matter where it occurs. Considering that valuable NFTs can be worth hundreds of thousands or even millions of dollars, the percentage fees received by Defendants from sales is extremely lucrative. It does not matter whether the sale is

¹⁶ LooksRare, *The NFT Marketplace You’ve Been Waiting For*, LOOKSRARE BLOG (Jan. 1, 2022), <https://docs.looksrare.org/blog/the-nft-marketplace>.

¹⁷ See Haverstock, *supra* note 10.

¹⁸ See Elaine Hu, *Clever NFT Traders Exploit Crypto’s Unregulated Landscape by Wash Trading on LooksRare*, COINTELEGRAPH (Jan. 30, 2022), <https://cointelegraph.com/news/clever-nft-traders-exploit-crypto-s-unregulated-landscape-by-wash-trading-on-looksrare>.

¹⁹ See Notopoulos, *supra* note 4.

1 legitimate or criminal, the computer code underlying all NFTs automatically ensures that Defendants
2 are able to continue to collect their fees.

3 11. Unlike NFT theft cases where hackers employ complicated, high-level techniques to
4 find and exploit weaknesses in a platform's computer code, thieves in cases like Mr. Armijo's simply
5 take advantage of Defendants' complete disregard for NFT consumers. In exchange for explosive
6 growth and enormous profits, Defendants have refused to implement even basic safety measures that
7 would discourage NFT theft. And while enticing new and inexperienced consumers into the world of
8 cryptocurrencies and NFTs, Defendants have failed to provide even a semblance of effective
9 customer service to make consumers whole again when things foreseeably go wrong. Defendants'
10 wholehearted embrace of the ethos of decentralization, which forces consumers to bear the daunting
11 responsibility of providing their own security, has created a situation where thieves are emboldened
12 to strike without fear of punishment. Rather than try to protect NFT consumers, Defendants have
13 decided to profit from their consumers' misfortune.

14 12. OpenSea and LooksRare disregarded the safety of all consumers who participate in
15 the NFT market by:

- 16 a. negligently failing to employ reasonable security measures to ensure their NFT
17 marketplaces are free from stolen NFTs,
- 18 b. failing to provide adequate and reasonable customer service to aid victims of
19 NFT theft,
- 20 c. failing to monitor their platforms to timely detect instances of theft,
- 21 d. failing to provide adequate remedies to later, unsuspecting purchasers of stolen
22 NFTs, and
- 23 e. failing to adequately assist law enforcement officials in attempts to retrieve
24 stolen NFTs.

25 13. BAYC disregarded its duty to monitor and maintain its ape club to legitimate owners
26 of BAYC NFTs because they are not restricting the access of BAYC NFTs that are known to be
27 stolen. BAYC further disregarded its duty to provide adequate and reasonable customer service to
28 ensure victims whose BAYC NFTs were stolen continue to enjoy the benefits of membership to

1 which they are rightfully entitled. BAYC also fails to adequately assist law enforcement officials in
2 attempts to retrieve stolen NFTs.

3 14. Defendants' conduct gives rise to claims for breach of contract, and breach of the
4 covenant of good faith and fair dealing, negligence, negligent training and supervision, and negligent
5 hiring. Mr. Armijo seeks to recover his stolen property, or the value thereof, and also to recover
6 damages, punitive damages, equitable relief, restitution, disgorgement, reasonable costs and
7 attorneys' fees, and all other remedies this Court deems proper.

8 **PARTIES**

9 15. Plaintiff Robert Armijo is a resident of Incline Village, Nevada. Mr. Armijo was the
10 owner of three BAYC NFTs. On February 1, 2021, the BAYC NFTs were stolen from Mr. Armijo's
11 online digital wallet and subsequently sold without his permission on OpenSea's and LooksRare's
12 online marketplaces.

13 16. Defendant OpenSea is incorporated in New York with its principal place of business
14 in New York City, New York. At all times relevant to this lawsuit, OpenSea transacted business in
15 Nevada.

16 17. Defendant BAYC was a Delaware limited liability company with its principal place of
17 business in Alexandria, Virginia. On February 22, 2022, Yuga Labs, LLC converted to a Delaware
18 corporation and is now Yuga Labs, Inc. At all times relevant to this lawsuit, BAYC transacted
19 business in Nevada.

20 18. At the time of this filing, it is believed that Defendant LooksRare Ltd. is a private
21 limited company registered in the United Kingdom as of January 26, 2022. At all times relevant to
22 this lawsuit, LooksRare transacted business in Nevada.

23 **JURISDICTION AND VENUE**

24 19. Upon information and belief, this Court has subject matter jurisdiction over this action
25 pursuant to 28 U.S.C. § 1332(a) based on diversity of citizenship and the amount in controversy
26 exceeds \$75,000 based on the current estimated value of Mr. Armijo's NFTs as described more fully
27 below.

28 ///

1 20. This Court has general and/or specific personal jurisdiction over OpenSea and
2 LooksRare because OpenSea and LooksRare purposefully direct their conduct at Nevada and Nevada
3 residents through their highly interacting marketplace websites, transact substantial business in
4 Nevada, have substantial aggregate contacts with Nevada, have engaged and are engaging in conduct
5 that has and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to
6 persons in Nevada, and in this case did cause harm to a Nevada resident, and purposefully avail
7 themselves of the laws of Nevada.

8 21. This Court has general and/or specific personal jurisdiction over BAYC because
9 BAYC purposefully directs its conduct at Nevada and Nevada residents. As set forth in greater detail
10 throughout this First Amended Complaint, BAYC maintains a club that includes members in Nevada,
11 including Mr. Armijo. BAYC utilizes multiple interactive websites to engage with its club members
12 who reside in Nevada, including Mr. Armijo. BAYC has engaged in and is engaging in conduct that
13 has and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to
14 persons in Nevada.

15 22. BAYC also purposefully avails itself of the privilege of conducting activities within
16 Nevada. As detailed throughout this First Amended Complaint, BAYC promises owners of BAYC
17 NFTs that “[w]hen you buy a Bored Ape, you’re not simply buying an avatar or a provably-rare piece
18 of art. You are gaining membership access to a club whose benefits and offerings will increase over
19 time. Your Bored Ape can serve as your digital identity, and open digital doors for you.”²⁰ BAYC is
20 not a mere seller of goods, BAYC created and controls an exclusive and active club the members of
21 which include Nevada residents, like Mr. Armijo. BAYC maintains substantial and ongoing
22 relationships with its club members who reside in Nevada and has created continuing obligations to
23 them by offering and promising exclusive access to merchandise, gifts, opportunities, and sales of all
24 new BAYC products and experiences. BAYC also partners with and/or implicitly allows third parties
25 to solicit its club members and the public in Nevada and engage with BAYC club members in
26 Nevada through the use of advertisements, airdrops, and exclusive commercial opportunities.

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28

²⁰ See Bored Ape Yacht Club, <https://boredapeyachtclub.com/#/home> (last visited June 20, 2022).

23. BAYC's presence and conduct in Nevada and its conduct directed at Nevada residents gave rise to the injuries suffered by Mr. Armijo as set out in this First Amended Complaint. Mr. Armijo purchased his BAYC NFTs and became a BAYC club member while he was at his home in Nevada, and he interacted with BAYC and the BAYC club members from Nevada. He also enjoyed the benefits of BAYC club membership in Nevada and anticipated receiving the ongoing benefits of membership in Nevada—benefit which BAYC is now denying him.

24. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1391(b)(1) because all three Defendants do substantial business in Nevada and with Nevada residents, like Mr. Armijo, through their online platforms and, at least for BAYC, off-line and in the real world. The District of Nevada is also the district in which a substantial part of the events or omissions giving rise to the claims occurred. Mr. Armijo was at his home in Nevada when his BAYC NFTs were stolen. Mr. Armijo was also in Nevada when he fruitlessly attempted to contact and get help from Defendants to recover his stolen property. This is also the jurisdiction in which Mr. Armijo is suffering the loss of benefits of his BAYC club membership. Mr. Armijo was harmed in this jurisdiction, where he resides, by Defendants' acts and omissions, as detailed in this First Amended Complaint.

FACTUAL ALLEGATIONS

Relevant Background

25. The NFT community is made up of a wide array of collectors, artists, creators, speculators, technology fans, and others who have led the boom in NFT popularity over the past year. Early enthusiasts have been drawn to cryptocurrencies and NFTs precisely because they enjoy the free-for-all atmosphere of NFT marketplaces, which offer a deregulated atmosphere that allows users to buy and sell NFTs free from banks, regulated stock markets, and the scrutiny of government agencies.²¹ On the heels of surging popularity, NFTs have become mainstream goods,²² and NFT

²¹ See Justin Scheck, *OpenSea's NFT Free-for-All*, WALL ST. J. (Feb. 12, 2022, 12:00 AM EST), https://www.wsj.com/articles/openseas-nft-free-for-all-11644642042?st=a3lsbnrbatw6ruf&reflink=desktopwebshare_permalink.

²² See Annabelle Williams, *From Paris Hilton to Christie's Auction House: How NFTs Went Mainstream*, Business Insider (Mar. 14, 2021, 6:22 AM), <https://www.businessinsider.com/how-nfts->

marketplaces are increasingly seeking to attract mainstream customers.²³ These everyday consumers are accustomed to interacting with businesses that offer strong fraud safeguards and theft protections but do not understand that NFT marketplaces are unable or unwilling to help when things go wrong.²⁴

26. The NFT community primarily communicates through two platforms: Twitter and Discord.

27. Twitter, an online news and social networking site, is home to the top NFT influencers who use the space to “educate, motivate, and elevate” the NFT community.²⁵ All Defendants are active on Twitter, using the platform to communicate with NFT consumers and members of their communities.

28. Discord is an online communications app that serves as a semipublic, forum-style community platform. Groups of people with common interests can create or join Discord “servers” that allow group members to meet and chat *via* text, video, or voice. Each Discord community is called a server, and each server usually has multiple channels within it that are dedicated to different sub-issues. For example, OpenSea has its own Discord server, and within the OpenSea server, there is an OpenSea customer service channel. To access Discord, a person must have an account with the Discord platform.

29. Each of the Defendants host their own Discord servers to communicate with users. Upon information and belief, none of the Defendants have dedicated customer service centers that are reachable through a phone number, live chat feature, or email address listed on their websites. Rather,

went-mainstream-cryptocurrency-blockchain-2021-3.

²³ *\$2B+ NFT Summer & What’s Next with OpenSea CEO Devin Finzer*, at 29:52-30:31, NFT NOW PODCAST (Aug. 18, 2021), <https://nftnow.com/podcasts/opensea-devin-finzer-interview/>.

²⁴ See Tomio Geron & Benjamin Pimentel, *OpenSea Puts Web3’s Decentralized Nature to the Test*, PROTOCOL (Jan 7. 2022), <https://www.protocol.com/newsletters/protocol-fintech/opensea-nft-frozen?rebelltitem=1#rebelltitem1>; see also Atallah, *Introducing the NFT Security Group*, *supra* note 12 (“Today, consumers are expected to have significant knowledge and blockchain background in order to onboard and participate safely.” Yet, “most people do not understand that companies like OpenSea cannot move their items for them, or that another company can interact with their listings and items just like OpenSea can.”).

²⁵ See *The 15 Biggest NFT Influencers on Twitter and YouTube*, COFFEE BROS. BLOG (Feb. 6, 2022), <https://coffeebros.com/blog/the-15-biggest-nft-influencers-on-twitter-and-youtube/>.

1 Defendants use customer service channels on their Discord servers that individuals may use to try
2 and get in touch with Defendants' representatives.

3 30. Many NFT projects use Discord to discuss their work, organize content, and allow
4 community members to meet. Because OpenSea and LooksRare only allow customers to buy or sell
5 NFTs, consumers often use Discord's NFT servers to find other individuals who are holding NFTs in
6 which they are interested, and the parties then set up NFT trades through third-party NFT trading
7 websites.

8 31. Because Discord hosts many NFT servers in an open, community-based format, the
9 platform is easily accessible to bad actors and is rife with phishing scams and malicious hacking.²⁶
10 One common scam is for hackers to pose as OpenSea customer service agents on OpenSea's official
11 Discord server to lure unsuspecting users onto another Discord server that is made to look like a
12 customer support channel for OpenSea.²⁷ Once victims arrive on the fake channel, hackers gain
13 access to the victims' digital wallets and immediately steal all of the NFTs and other digital assets
14 contained therein.²⁸

15 32. In November 2021, due to the growing popularity of NFTs, Mr. Armijo decided to
16 become involved in the NFT community. He signed up for a Twitter account and began following
17 NFT influencers, and he became active on several Discord servers associated with various NFT
18 projects. Mr. Armijo also set up a digital wallet with MetaMask, an online service that houses
19 software-based digital wallets that allow users to store their digital assets, and he began purchasing
20 NFTs.

21 33. Mr. Armijo specifically wanted to buy blue-chip NFTs, meaning digital assets that are
22 considered safe, long-term assets that will retain a high value into the future. He was particularly
23

24
25 ²⁶ See Tomio Geron, *Bored Ape Yacht Club NFT Theft Shows the Ease of Hacking Crypto*, Protocol
(Jan. 7, 2022), <https://www.protocol.com/fintech/bored-ape-hack-nft>.

26 ²⁷ See Andrew Wang, *The NFT Scammers Are Here*, THE VERGE (Sept. 21, 2021, 10:00 AM EDT),
27 [https://www.theverge.com/22683766/nft-scams-theft-social-engineering-opensea-community-](https://www.theverge.com/22683766/nft-scams-theft-social-engineering-opensea-community-recovery)
28 [recovery](https://www.theverge.com/22683766/nft-scams-theft-social-engineering-opensea-community-recovery).

²⁸ *Id.*

interested in the Bored Ape Yacht Club collection, not just because he loved the BAYC NFT artwork, but also due to the utility of the NFTs and BAYC's promise of club membership and the multitude of benefits that come with club membership.

34. On November 14, 2021, Mr. Armijo used some of his Ethereum cryptocurrency to purchase BAYC #4329 on the OpenSea marketplace for 50 Ether²⁹ or around \$221,337 at the time of the sale.³⁰ Mr. Armijo's ownership of the Bored Ape NFT was recorded on the Ethereum blockchain.



BAYC #4329

35. With his purchase of BAYC #4329, Mr. Armijo became a member of the BAYC club entitled to all rights and benefits of membership.

36. On November 15, 2021, Mr. Armijo purchased MAYC #1819 on the OpenSea marketplace for 10 Ether or \$27,452.10 at the time of the sale.³¹ His ownership of the Mutant Ape NFT was recorded on the Ethereum blockchain.

²⁹ See OpenSea, List of Activity for the Account of bo66ydigital (last visited Feb. 19, 2022), <https://opensea.io/bo66ydigital?tab=activity>.

³⁰ See *Ethereum (ETH) Price Per Day from August 2015 to February 17, 2022 (in U.S. Dollars)*, STATISTA (last visited Feb. 19, 2022), <https://www.statista.com/statistics/806453/price-of-ethereum/>.

³¹ See OpenSea, List of Activity for the Account of bo66ydigital (last visited Feb. 19, 2022), <https://opensea.io/bo66ydigital?tab=activity>.



MAYC #1819

37. On January 2, 2022, Mr. Armijo purchased MAYC #7713 on the OpenSea marketplace for 20 Ether or \$54,904.20 at the time of the sale.³² His ownership of the Mutant Ape NFT was recorded on the Ethereum blockchain.



MAYC #7713

³² See *id.*

1 *The BAYC Club*

2 38. BAYC was launched by startup company Yuga Labs, LLC in late April 2021. As
3 previously explained, BAYC NFT collection consists of an original set of 10,000 Bored Ape NFTs,
4 which depict artistic images of disinterested-looking apes customized with unique facial expressions,
5 outfits, and accessories. The Bored Ape NFTs were offered in a public sale, which ended when the
6 collection sold out by May 1, 2021.

7 39. Following the success of the original Bored Ape NFTs, on August 28, 2021, BAYC
8 released the Mutant Ape Yacht Club (“MAYC”). MAYC is a second set of up to 20,000 images
9 depicting Mutant Apes, which are grotesquely altered mutant versions of the original ape designs.³³
10 The release included a public sale of 10,000 Mutant Ape NFTs as well as a separate airdrop (free
11 giveaway) of “mutant serum vials” to every owner of a Bored Ape NFT. When a Bored Ape NFT
12 digitally “drinks” the mutant serum, a new Mutant Ape NFT is created. Simply put, BAYC gifted all
13 of its ape club members an additional valuable NFT—based solely on their membership in the BAYC
14 club. Club members could then sell, trade, or commercialize the Mutant Ape NFT as the member
15 preferred.³⁴ Because MAYC is part of the BAYC ecosystem, holders of Mutant Ape NFTs are
16 granted access to the exclusive BAYC club and enjoy all the rights and benefits that come with club
17 membership.³⁵

18 40. BAYC club membership is not limited to only those individuals that initially
19 purchased a BAYC NFT or MAYC NFT directly from BAYC. Membership is predicated on
20 ownership of a BAYC NFT (or affiliate NFT). Indeed, the official BAYC Twitter account
21 encourages people to join the club by buying a Bored Ape or Mutant Ape NFT on OpenSea.³⁶
22
23

24 ³³ Reethu Ravi, *A Guide to the Mutant Ape Yacht Club (MAYC) NFT*, NFT EVENING (Aug. 29,
25 2021), <https://nftevening.com/the-mutant-ape-yacht-club-baycs-mutant-apes-are-a-roaring-success/>
26 (The BAYC creators explained, “The MAYC is a way to reward our ape holders with an entirely new
27 NFT—a ‘mutant’ version of their ape—while also allowing newcomers into the BAYC ecosystem at
28 a lower tier of membership.”).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See @BoredApeYC, Twitter, <https://twitter.com/BoredApeYC> (last visited June 20, 2022).

41. BAYC NFTs are not simply valuable as a piece of digital art. They also serve as a type of digital identity and club ID card, allowing owners of the BAYC NFTs to receive special rights and privileges based on confirming proof of ownership through the blockchain ledger.

42. Upon buying a BAYC NFT, an individual becomes a member of the BAYC club. BAYC promises that club members will receive all benefits, opportunities, and exclusive offers that BAYC and its partners release in the future. As BAYC itself explains on its website:³⁷

WELCOME TO THE CLUB

When you buy a Bored Ape, you're not simply buying an avatar or a provably-rare piece of art. You are gaining membership access to a club whose benefits and offerings will increase over time. Your Bored Ape can serve as your digital identity, and open digital doors for you.

43. BAYC NFT owners use their Bored Ape and Mutant Ape images as profile pictures for their multiple social media accounts. The valuable images—known as the Lamborghinis of the digital world³⁸—are a status symbol among the NFT community, similar to the way chief executives wear Rolex watches to project status and wealth.³⁹

44. In fact, BAYC club members can now display their BAYC NFT images on their own smart watches to show off their club membership wherever they go.⁴⁰

³⁷ Bored Ape Yacht Club, <https://boredapeyachtclub.com/#/home> (last visited June 20, 2022).

³⁸ See Sophie Haigney, *What Makes Bored Ape NFTs So Desirable?*, WALL ST. J. MAGAZINE (Feb. 24, 2022, 8:34 AM ET), https://www.wsj.com/articles/bored-ape-nfts-so-expensive-11645709606?st=70azl4boqlzm25n&reflink=desktopwebshare_permalink.

³⁹ See Daniel Van Boom, *Bored Ape Yacht Club NFTs: Everything You Need to Know*, CNET (Feb. 8, 2022, 7:50 PM PST), <https://www.cnet.com/how-to/bored-ape-yacht-club-nfts-everything-you-need-to-know/>.

⁴⁰ @Mark2036, Twitter (June 2, 2021, 5:00 AM), <https://twitter.com/mark2036/status/1400044723868516354?lang=en>.



45. Dozens of celebrities, including Gwyneth Paltrow, Snoop Dogg, Steph Curry, Justin Bieber, and Eminem own BAYC NFTs.⁴¹ And as reported by The Bored Ape Gazette Twitter account, each of the 2022 NFL and NBA Championship teams had at least one BAYC club member on their roster: Von Miller for the Los Angeles Rams and Steph Curry and Andrew Wiggins for the Golden State Warriors.⁴²

46. BAYC club members are granted access to exclusive community events, including admittance to Ape Fest—an annual multi-night in-person event featuring an actual yacht party and concerts with appearances from famous comedians and music bands.⁴³ Other organized BAYC meetups have occurred in New York, California, Hong Kong, and the United Kingdom.⁴⁴ BAYC

⁴¹ See Shanti Escalante-De Mattei, *Bored Apes Founders in Talks with Andreessen Horowitz for Funding*, ARTNEWS (Feb. 4, 2022, 12:08 PM), <https://www.artnews.com/art-news/news/bored-apes-andreessen-horowitz-investment-1234618014/>.

⁴² See @BoredApeGazette, Twitter (June 16, 2022, 10:05 PM), <https://twitter.com/BoredApeGazette/status/1537647562936696838>.

⁴³ See Van Boom, *supra* note 39.

⁴⁴ *Id.*

club members are also allowed entry to a private Discord server and gain privileged access to other NFTs.⁴⁵

47. To demonstrate BAYC off-line reach, on June 23, 2022, ApeFest 2022 ended with a huge concert featuring musicians Snoop Dogg and Eminem, who debuted a new song along with a new music video featuring BAYC and the BAYC NFTs owned by the celebrities.⁴⁶ BAYC celebrated the release with an exclusive, 48-hour only merchandise drop based on the collaboration.⁴⁷



Yep, that just happened. Celebrating the new track @SnoopDogg and @Eminem just dropped at ApeFest with a merch quickie starting at noon ET tomorrow. 48 hours only, @apecoin only, with one MAYC/BAYC-only item AND one available to all. Check back here for the link tomorrow



Bored Ape Yacht Club Retweeted



Took too long to reconnect with @snoopdogg- you know we had to make a movie!
Eminem.lnk.to/FromTheD2TheLBC
#FromTheDToTheLBC #curtaincall2 @BoredApeYC



48. As explained by Protocol, a news agency focused on covering the technology sector, “If you want to understand the true potential of NFTs—the promise of exclusive club access, ownership of a culturally relevant piece of art and a community bigger and cooler than most—the

⁴⁵ See Viktor, *The Bored Ape Yacht Club Business Model—How Does Bored Ape Yacht Club Make Money?*, PRODUCTMINT (Feb. 8, 2022), <https://productmint.com/bored-ape-yacht-club-business-model-how-does-bored-ape-yacht-club-make-money/>.

⁴⁶ See Eminem & Snoop Dogg – From the D 2 The LBC [Official Music Video], YOUTUBE (June 23, 2022), <https://www.youtube.com/watch?v=RjrA-sIMoZ4>.

⁴⁷ See @BoredApeYC, Twitter (June 23, 2022, 8:02 PM), <https://twitter.com/BoredApeYC/status/1540153474851246080>; see also @Eminem, Twitter (June 23, 2022, 10:12 PM), <https://twitter.com/Eminem/status/1540186179265363970>.

Bored Ape Yacht Club is the closest thing you'll find . . . The point is, Bored Apes aren't just an art project; they're a genuine cultural phenomenon."⁴⁸

49. The BAYC club is made up of thousands of dedicated individuals who are actively engaged with one another and the BAYC club at large through Twitter and Discord posts. When a new club member announces they have purchased a BAYC NFT, the BAYC club responds with glee, welcoming the new member to the "club family."⁴⁹ BAYC club members promote each other's projects and express their love and support for all things BAYC.⁵⁰ The official BAYC Twitter account interacts with individual club members, frequently retweeting their posts for the entire club membership to see and engage with.⁵¹

Bored Ape Yacht Club Retweeted
BonnieLass.eth
@BonnieLass88

Even took the time to rep @BoredApeYC on my wedding day!



Bored Ape Yacht Club Retweeted
MIKEGRILLMADEIT NFTNYC @mikegrillmadeit - Jun 18
Bored in the Bays @BoredApeYC



13 16 286

King Kong
@kingkong45_eth

ok , a lot of FUD going around @BoredApeYC , let me be clear. BAYC is the BEST nft project ever created, it's a culture movement and @yugalabs has given so much back to holders. it's also the ONLY real BLU CHIP. anyone that FUD BAYC, just wish they had one. enjoy apefest fam!

⁴⁸ David Pierce and the Source Code Team, *Bored Ape Yacht Everything*, PROTOCOL (March 13, 2022), <https://www.protocol.com/newsletters/sourcecode/bored-ape-yacht-everything?rebelltitem=1#rebelltitem1>.

⁴⁹ See, e.g., @NCOUW1, Twitter (Jun. 15, 2022, 6:33 AM), <https://twitter.com/NCOUW1/status/1537050607827165187> (see also replies to this post).

⁵⁰ See, e.g., @kingkong45_eth, Twitter (Jun. 16, 2022, 5:08 AM), https://twitter.com/kingkong45_eth/status/1537391636807708673.

⁵¹ See, e.g., @mikegrillmadeit, Twitter (Jun. 18, 2022, 2:59 PM), <https://twitter.com/mikegrillmadeit/status/1538265262935400451>; @BonnieLass.eth, Twitter (Jun. 13, 2022, 12:19 PM), <https://twitter.com/BonnieLass88/status/1536413059346010112>.

50. BAYC is aware that its success largely hinges on the members of the BAYC club. In a leaked pitch deck BAYC presented to venture capital investors, BAYC stated, “But our success isn’t just in famous token holders. We have created a community that LIVES to play, learn, work, and just be together. And their engagement proves it.”⁵²

51. BAYC encourages and fosters the BAYC club spirit, often referring to club members as “Apes.” In a recent Twitter post during ApeFest 2022, BAYC tweeted, “So amazing to see BAYC and MAYC members meeting, reuniting, and seeing each other in person for the first time. Can’t wait to hang with more of you tonight.”⁵³ Following this post, the BAYC Twitter feed was filled with posts of BAYC club members in photos with the founding members of BAYC.⁵⁴



⁵² See Yuga Labs Pitch Deck, BEST PITCH DECKS, <https://bestpitchdeck.com/yuga-labs> (last visited June 22, 2022); see also Andrew Hayward, *What You Need to Know About the Bored Ape Yacht Club’s Otherside NFT Drop*, DECRYPT (Apr. 29, 2022), <https://decrypt.co/99078/bored-ape-yacht-club-otherside-nft-drop-what-you-need-know> (explaining that BAYC co-founder Garga admitted that the pitch deck was real on his Twitter account).

⁵³ @BoredApeYC, Twitter (June 21, 2022, 2:05 PM), <https://twitter.com/BoredApeYC/status/1539338703830646785>.

⁵⁴ See, e.g., @RoninDaCC, Twitter (June 21, 2022, 6:30 PM), <https://twitter.com/RoninDaCC/status/1539405514664300544>; @byswickie, Twitter (June 22, 2022, 10:19 AM), <https://twitter.com/byswickie/status/1539644276807794689>.

52. BAYC NFT owners possess full commercial rights to their digital images and the underlying ape characters.⁵⁵ Owners can, for example, sell merchandise depicting their ape. One BAYC NFT owner setup a Twitter account and developed a backstory for his ape, calling the character Jenkins.⁵⁶ In September 2021, Jenkins was signed to a real-world talent agency and will have a biography written in part by a best-selling novelist.⁵⁷ Another group of BAYC NFT owners created a band consisting of three Bored Apes and one Mutant Ape, which was subsequently contracted under the Universal Music Group.⁵⁸ Still other BAYC NFT owners have capitalized by licensing their ape characters for comic books, film and tv projects, and cannabis branding.⁵⁹ There is even a Bored Ape-themed hamburger restaurant in California known as Bored and Hungry, which displays the owner's three BAYC NFTs on all food packaging and marketing materials.⁶⁰

53. BAYC earns profits from its NFT ape collections in multiple ways.

54. BAYC initially profits from the primary sales of its NFT collections. In late April 2021, BAYC launched the original 10,000 Bored Ape NFTs. The entire collection sold within a few days, netting the BAYC founders a \$2 million dollar profit.⁶¹

55. On August 28, 2021, BAYC launched a public sale of its 10,000 Mutant Ape NFTs. The Mutant Apes sold within an hour and raised \$96 million in profit for the BAYC founders.⁶²

⁵⁵ See Van Boom, *supra* note 39.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Haigney, *supra* note 38.

⁶⁰ See Ayomari, *New Bored Ape Yacht Club Restaurant Hopes to Show the Potential of NFTs Translating into the Real World*, FOODBEAST (Mar. 22, 2022), <https://www.foodbeast.com/news/new-bored-ape-yacht-club-restaurant-hopes-to-show-the-potential-of-nfts-translating-into-the-real-world/>.

⁶¹ See Viktor, *supra* note 45.

⁶² See Ekin Genc, *Bored Ape Yacht Club Sells \$96 Million of Mutant Ape NFTs in One Hour*, DECRYPT (Aug. 29, 2021), <https://decrypt.co/79718/bored-ape-yacht-club-sells-96-million-of-nfts-in-hour-for-mutant-apes-launch>.

56. As explained above, BAYC also receives a 2.5% royalty fee for every secondary sale of BAYC NFTs. In early September 2021, a collection of 101 BAYC NFTs sold for \$24.4 million at a Sotheby's auction, followed by another Sotheby's auction in October 2021, in which a single Bored Ape NFT sold for \$3.4 million.⁶³ As of January 2022, BAYC had a sales turnover of over \$1 billion,⁶⁴ with the founders of BAYC collecting more than \$60 million in secondary sales income.⁶⁵ BAYC also receives a portion of the revenue generated through other secondary transactions, including royalty sales from commercialized content associated with the apes.⁶⁶

57. Although BAYC NFT owners receive commercialization rights for their individual ape images, BAYC retains the rights to the collective BAYC name, logo, and ape club.⁶⁷ BAYC is expanding into an "offchain" brand, meaning it exists outside of the blockchain. BAYC has a partnership with Adidas, has launched a BAYC mobile video game, and a Bored Ape image was recently featured on the cover of Rolling Stone Magazine.⁶⁸ A managing director for a venture capitalist fund that invests in crypto assets characterized BAYC as "the next Disney."⁶⁹ BAYC founders have plans to expand BAYC into "a Web3 lifestyle company."⁷⁰ Web3 is an idea for a new iteration of the internet based on blockchain technology, which incorporates decentralized and crypto-based economies.

⁶³ See Viktor, *supra* note 45.

⁶⁴ See Gola, *supra* note 3.

⁶⁵ See Viktor, *supra* note 45.

⁶⁶ *Id.*

⁶⁷ See Andrew Hayward, *Arizona Iced Tea's Bored Ape NFT Brand Use Was 'Inappropriate,' Creators Warn*, DECRYPT (Aug. 23, 2021), <https://decrypt.co/79231/arizona-iced-tea-bored-ape-nft-brand-use-inappropriate>.

⁶⁸ See Van Boom, *supra* note 39.

⁶⁹ See Haigney, *supra* note 38.

⁷⁰ Samantha Hissong, *How Four NFT Novices Created a Billion-Dollar Ecosystem of Cartoon Apes*, Rolling Stone (Nov. 1, 2021), <https://www.rollingstone.com/culture/culture-news/bayc-bored-ape-yacht-club-nft-interview-1250461/>.

58. BAYC recently raised \$450 million in a funding round led by venture capital firm Andreessen Horowitz, which valued BAYC at \$4 billion. BAYC plans to use the new funding to build an NFT-based gaming metaverse known as the “Otherside.”⁷¹

The Growth of the BAYC Ecosystem

59. BAYC has grown rapidly, expanding the BAYC ecosystem to cover a wide range of projects and new opportunities to benefit BAYC and the BAYC club members.

60. On March 11, 2022, BAYC announced that it had acquired the intellectual property rights to two rival blue-chip NFT projects known as the CryptoPunks and Meebits.⁷² CryptoPunks—a set of 10,000 pixelated NFTs—are some of the oldest and most valuable NFTs ever created. BAYC NFTs are second only to CryptoPunks in the amount of lifetime sales volume generated by each collection.⁷³ The CryptoPunks and Meebits will interact with BAYC NFTs in the BAYC ecosystem.

61. On March 16, 2022, the BAYC-linked ApeCoin virtual token was launched by proxy.⁷⁴ ApeCoin is a fungible cryptocurrency that reflects monetary value and is used to buy and sell goods throughout the BAYC ecosystem. ApeCoin is listed and available to trade on almost every major centralized crypto exchange, with the total supply of ApeCoin capped at one billion.⁷⁵

62. Most importantly, BAYC has adopted ApeCoin as its de facto currency for all new projects.⁷⁶ For example, BAYC recently conducted a limited-time sale of exclusive BAYC branded merchandise to BAYC club members, which required payment in ApeCoin only.⁷⁷ In another

⁷¹ See Eli Tan, *Bored Ape Yacht Club Owner Yuga Labs Raises \$450M Led by A16z*, COINDESK (Mar. 22, 2022, 2:29 PM MDT), <https://www.coindesk.com/business/2022/03/22/bored-apes-owner-yuga-labs-raises-450m-led-by-a16z/>.

⁷² Owen Fernau, *Yuga Labs’ Acquisition of CryptoPunks’ IP Sends Bored Apes Soaring*, THE DEFIANT (Mar. 15, 2022), <https://thedefiant.io/yuga-labs-cryptopunks-acquired-bored-apes/>.

⁷³ *Id.*

⁷⁴ See Tan, *supra* note 71; see also @apecoin, Twitter (Mar. 16, 2022, 3:20 PM), <https://twitter.com/apecoin/status/1504201561597173764>.

⁷⁵ See Will Gottsegen, *What is ApeCoin and Who is Behind It?*, COINDESK (Mar. 18, 2022, 3:38 PM MDT), <https://www.coindesk.com/layer2/2022/03/18/what-is-apecoin-and-who-is-behind-it/>.

⁷⁶ *Id.*

⁷⁷ See @BoredApeYC, Twitter (Mar. 26, 2022, 2:57 PM), <https://twitter.com/BoredApeYC/status/1507824163754745857>.

1 example, as discussed below, BAYC required that all purchases in its new Otherside metaverse be
2 made solely in ApeCoin.⁷⁸

3 63. At the time of ApeCoin's launch, 15% of the total supply of ApeCoin was withheld
4 from the public sale for the benefit of BAYC club members.⁷⁹ For the first 90 days of ApeCoin's
5 existence, anyone who owned a combination of NFTs from BAYC, MAYC, and the Bored Ape
6 Kennel Club (another BAYC NFT spinoff), were allowed to claim thousands of free ApeCoin from
7 ApeCoin's website.⁸⁰ For example, for each Bored Ape NFT a person owned, they were entitled to
8 claim 10,094 ApeCoins.⁸¹ Although the value of ApeCoin fluctuates, on March 18, 2022, 10,094
9 ApeCoins were worth around \$150,000.⁸²

10 64. On March 18, 2022, the official Yuga Labs Twitter account announced that BAYC
11 was launching a new metaverse platform known as the "Otherside."⁸³ The Otherside is an eagerly
12 anticipated virtual world that is still currently under development. When it is complete, the Otherside
13 will be "a gamified interoperable metaverse" that will allow thousands of users to play together in
14 real time, using their NFTs as playable characters.⁸⁴ The Otherside is an "immersive, interactive, and
15 collaborative" digital world that will allow certain players to participate "in prototype builds, demos,
16 and tests that shape the final game design and experience."⁸⁵ In other words, some of the early
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20 ⁷⁸ See @OthersideMeta, Twitter (Apr. 25, 2022, 5:29 PM),
<https://twitter.com/OthersideMeta/status/1518734000516440068>.

21 ⁷⁹ See @apecoin, Twitter (Mar. 16, 2022, 3:02 PM),
<https://twitter.com/apecoin/status/1504201561597173764>.

22 ⁸⁰ See ApeCoin: Claim, <https://apecoin.com/claim> (last visited June 22, 2022).

23 ⁸¹ *Id.*

24 ⁸² See Gottsegen, *supra* note 75.

25 ⁸³ See @yugalabs, Twitter (Mar. 18, 2022, 8:55 PM),
<https://twitter.com/yugalabs/status/1505014986556551172>. BAYC has partnered with Improbable (a
26 UK-based metaverse technology company) and Animoca Brands (a Hong Kong-based game software
27 and venture capital company) to build the Otherside metaverse. See Langston Thomas, *Otherside:
Everything to Know About the New BAYC NFT Project*, NFT Now (May 4, 2022),
<https://nftnow.com/guides/otherside-everything-you-need-to-know/>.

28 ⁸⁴ See Otherside, <https://otherside.xyz/> (last visited June 22, 2022).

⁸⁵ *Id.*

1 adopters of the new products offered by BAYC in the Otherside will allow these individuals to be co-
2 creators of the Otherside.

3 65. Within the Otherside metaverse, there are plots of virtual land that are available for
4 players to “own” if they purchase or claim an “Otherdeed” NFT.⁸⁶ Owning an Otherdeed gives
5 players the ability to use their virtual land to “collect resources, create and play” on the land.⁸⁷ An
6 Otherdeed is also the “key” to participating in the collaborative efforts to build the Otherside
7 metaverse.⁸⁸ Currently, there are 100,000 plots of virtual land allotted among various groups within
8 the Otherside: 10,000 plots of the best digital land, located in the center of the Otherside, were
9 reserved for Bored Ape NFT owners, 20,000 plots of the second-best digital land were reserved for
10 Mutant Ape NFT owners, 15,000 plots were reserved for the Otherside developers, and the remaining
11 55,000 were sold to the public⁸⁹ in a chaotic sale that took place on April 30, 2022, which resulted in
12 record-high transaction fees and many users losing thousands of dollars in failed transactions.⁹⁰

13 66. During the initial public sale, users were required to use ApeCoin to purchase
14 Otherdeeds,⁹¹ which generated the equivalent of \$320 million in revenue for BAYC in a matter of
15 days.⁹² And BAYC continues to collect royalty fees on all secondary sales of Otherdeeds.

16 67. Rather than being required to participate in the frenzied public sale of Otherdeeds,
17 BAYC club members were allowed to “claim” an Otherdeed for free within 21 days of the start of the
18 sale.⁹³ Claiming an Otherdeed allowed BAYC club members to immediately participate in the
19

20 ⁸⁶ *Id.*

21 ⁸⁷ *Id.*

22 ⁸⁸ *Id.*

23 ⁸⁹ *Id.*

24 ⁹⁰ See Taylor Locke, *More Than \$157 Million Worth of Ether Permanently Destroyed, and 3 Other*
25 *Things to Know About the Record Bored Ape Yacht Club Metaverse Land Sale*, FORTUNE (May 2,
26 2022, 11:35 AM MDT), <https://fortune.com/2022/05/02/bored-ape-yacht-club-yuga-labs-metaverse-land-ether-chaos/>; Will Gottsegen, *Otherside and the Future of NFT Consolidation*, COINDESK (May 2, 2022, 12:50 PM MDT), <https://www.coindesk.com/layer2/2022/05/02/otherside-and-the-future-of-nft-consolidation/>;

27 ⁹¹ See @OthersideMeta, Twitter (Apr. 25, 2022 5:29 PM),
<https://twitter.com/OthersideMeta/status/1518734000516440068>; see also Gottsegen, *supra* note 90.

28 ⁹² See Locke, *supra* note 90.

⁹³ See @OthersideMeta, Twitter (Apr. 25, 2022, 5:29 PM),

collaborative aspects of the Otherside, including product demonstrations, in-person events, contests, and game/character design.⁹⁴

68. Although it is currently unknown how big the Otherside metaverse will become and exactly what it will entail, a roadmap for the Otherside hints that multiple opportunities and experiences will be made available to BAYC club members.⁹⁵ A leaked pitch deck BAYC presented to venture capital investors in early 2022 also includes plans that BAYC will continue to engage the BAYC club with new product releases and commercial opportunities.⁹⁶

BAYC's Relationship with Third Parties

69. BAYC partners with and/or implicitly allows third parties to solicit individuals on behalf of BAYC and to engage with BAYC club members through the use of advertisements, airdrops, and exclusive commercial opportunities.

70. Upon information and belief, in July of 2021, a large advertising campaign featuring BAYC “apes” and the BAYC logo was conducted in Las Vegas, Nevada.⁹⁷ Giant billboards and bus stop posters advertising BAYC were located throughout the city. It is unclear what role BAYC itself played in the advertising campaign; however, as explained above, BAYC retains the copyright to the collective BAYC name, logo, and club. BAYC was aware, or should have been aware, that such a large advertising campaign was being conducted using its intellectual property in one of the most popular cities in the world. More likely, BAYC appreciated the free advertising and enthusiastic support of its BAYC club members and implicitly allowed the campaign to be conducted on its behalf.

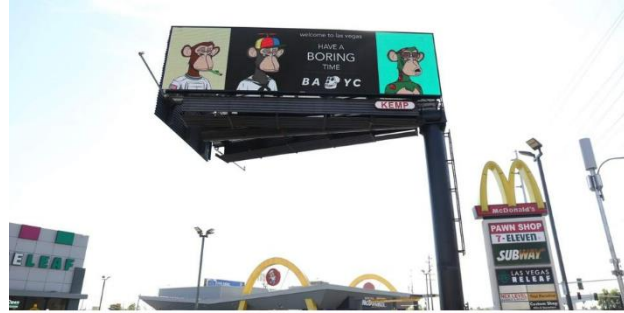
<https://twitter.com/OthersideMeta/status/1518733999405137920>.

⁹⁴ See Thomas, *supra* note 83.

⁹⁵ Otherside, Obelisk: The Voyager's Journey, <https://otherside.xyz/obelisk> (last visited June 22, 2022).

⁹⁶ See Editorial Office CVJ.CH, *The Bored Ape “Otherside” Metaverse: Innovation or Cashgrab?*, CRYPTO VALLEY J. (May 6, 2022), <https://cvj.ch/en/focus/background/the-bored-ape-otherside-metaverse-innovation-or-cashgrab/>.

⁹⁷ See Morgan Linton, *Rumor has it that Bored Ape Yacht Club is Getting Ready to Make a Big Announcement*, MORGANLINTON.COM (July 13, 2021), <https://www.morganlinton.com/rumor-has-it-that-bored-ape-yacht-club-is-getting-ready-to-make-a-big-announcement/>.



71. As previously explained, ApeCoin was launched on March 16, 2022. Although ApeCoin is the de facto cryptocurrency of the BAYC ecosystem, BAYC insists that ApeCoin is actually the product of a newly formed decentralized autonomous organization (“DAO”) known as ApeCoin DAO.⁹⁸ A DAO is an entity with no central leadership—rather, the entity is collectively owned and operated by the DAO’s own members. To become a member of ApeCoin DAO, a person only needs to own ApeCoin.⁹⁹ The members can make proposals for the DAO, which the members then vote on.

72. According to BAYC, ApeCoin DAO is the entity responsible for releasing ApeCoin.¹⁰⁰ However, despite the claimed independence between the two entities (and before the DAO had any actual members), ApeCoin DAO still chose to provide 15% of the total supply of ApeCoin to BAYC club members for free. BAYC club members were instructed to go to apecoin.com to claim their ApeCoin, which was then airdropped into their digital wallets.¹⁰¹ An airdrop is a digital asset giveaway undertaken by a crypto project (such as ApeCoin DAO) to distribute its cryptocurrency or virtual tokens to potential users. To receive a coin or token via

⁹⁸ See Gottsegen, *supra* note 75.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See @apecoin, Twitter (Mar. 16, 2022, 3:02 PM), <https://twitter.com/apecoin/status/1504201561597173764>.

airdrop, a user must provide their digital wallet address to the project that is distributing the coins. Once they have done so, the coins will appear in the user's wallet. In this case, BAYC club members went to apecoin.com, provided their digital wallet address, and were airdropped a certain amount of ApeCoin depending on which and how many BAYC NFTs (and related NFTs) they owned.

73. On April 11, 2022, Coinbase—a popular cryptocurrency trading platform—announced via Twitter that it is “creating an interactive three-part film featuring the @BoredApeYC & @apecoin communities.”¹⁰² BAYC club members holding BAYC NFTs were invited to submit their apes along with their made up character descriptions for consideration as characters in the films so they could be reviewed by an actual Hollywood casting director.¹⁰³ Following the announcement, BAYC retweeted Coinbase's message on its own Twitter account and encouraged BAYC NFT owners to submit their apes for casting. MAYC NFT owners were told that they would be able to participate in the casting process for the second movie.¹⁰⁴

74. According to Coinbase's entertainment and culture marketing director, William Swann, even though BAYC is not directly involved with the films' production, “their eyes and approval will be on it.”¹⁰⁵

BAYC Uses a Multitude of Interactive Websites to Communicate and Conduct Commercial Transactions with the BAYC Club

75. As previously explained, BAYC communicates with BAYC club members through multiple Twitter accounts¹⁰⁶ and Discord servers.¹⁰⁷ These methods of communication are much more

¹⁰² @coinbase, Twitter (Apr. 11, 2022, 12:48 PM), <https://twitter.com/coinbase/status/1513589848048689152>.

¹⁰³ See Eli Tan, *Bored Apes Go Hollywood with Coinbase-Produced Movie Trilogy*, COINDESK (Apr. 11, 2022, 12:40 PM MDT), <https://www.coindesk.com/business/2022/04/11/bored-apes-go-hollywood-with-coinbase-produced-movie-trilogy/>.

¹⁰⁴ @BoredApeYC, Twitter (Apr. 11, 2022, 1:00 PM), https://twitter.com/BoredApeYC/status/1513592766307225600?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1513592766307225600%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Ffluckytrader.com%2Farticles%2Fbored-ape-yacht-club-x-coinbase-the-degen-trilogy.

¹⁰⁵ See Tan, *supra* note 103.

¹⁰⁶ There are separate Twitter accounts for Yuga Labs, the Bored Ape Yacht Club, and the Otherside metaverse, but they are all under the control of BAYC. Each of the four founding members

1 than merely passive websites that simply allow parties to exchange information—rather, they provide
 2 essential services to both the members of the BAYC club and others who are interested in becoming
 3 members of the BAYC club.

4 76. Because BAYC lacks a traditional customer service department, there are only two
 5 methods for getting in touch with a BAYC representative: (1) posting a message in the BAYC
 6 Discord server or (2) tweeting a message tagging one of the BAYC Twitter accounts and hoping to
 7 receive a response. (At the time of the theft, Mr. Armijo was able to post a message to a dedicated
 8 customer support channel within the BAYC Discord server. It now appears that the support channel
 9 no longer exists, or it is now only available in the members only section of the Discord server.)
 10 BAYC representatives reach out to BAYC club members and other users to answer their questions
 11 and provide service in whatever state or country they are located.

12 77. Beyond the provision of customer support services, the BAYC Twitter and Discord
 13 accounts serve the vital purpose of notifying BAYC club members of new products, services,
 14 projects, airdrops, etc. that will be made available to BAYC club members and the public. Due to the
 15 prevalence of scams and hacks on Twitter and Discord, BAYC is always very careful to provide
 16 detailed instructions for BAYC club members and nonmembers to follow, along with verified links to
 17 the interactive websites where the commercial transactions will occur. For example, following an
 18 announcement on the official BAYC Twitter account alerting club members about the date of Ape
 19 Fest 2022, BAYC posted the following tweets:¹⁰⁸

25 of BAYC also has an individual Twitter account that they use—to varying degrees of activity—to
 26 interact with BAYC club members and the greater community.

27 107 There are separate Discord servers for the Bored Ape Yacht Club and the Otherside metaverse,
 but they are under the control of BAYC.

28 108 @BoredApeYC, Twitter (May 16, 2022, 6:29 PM),
<https://twitter.com/BoredApeYC/status/1526359251911843840>; @BoredApeYC, Twitter (May 31,
 2022, 7:45 PM), <https://twitter.com/BoredApeYC/status/1531814152318210048>.



More info to come. In the meantime, if you plan to attend, please fill out our quick survey for apes in Discord. Note, you do NOT need to connect your wallet to take the survey and we won't DM you about ApeFest (or anything else).



As always, protect your apes and your wallets. Keep in mind this will be the only way to request tickets. Only use official links posted here or from the ApeFest site once it's live. Head to the BAYC discord with questions regarding any issues:

78. The following is a noncomprehensive list of the interactive websites BAYC uses or has used to conduct commercial transactions with BAYC club members and nonmembers:

- otherside.xyz – This is the official website for BAYC's new Otherside metaverse. BAYC club members were instructed to come here to claim their Otherdeeds for the digital land available in the metaverse. Nonmembers were instructed to come here to buy their Otherdeeds.¹⁰⁹
- somethingisbrewing.xyz – this site was used prior to the launch of the Otherside metaverse. Members of the public who were not BAYC club members were allowed to purchase Otherdeeds when the sale began on April 30, 2022. However, these nonmembers were only allowed to participate in the sale if they provided Know Your Customer information and received approval from BAYC in advance of the sale. Nonmembers were instructed to visit the site to provide the required information.¹¹⁰
- apecoin.com – BAYC club members were instructed to come to this site to claim their free ApeCoin.¹¹¹
- store.boredapeyachtclub.com – This is the official website offering BAYC merchandise for sale to BAYC club members. The site is only active during exclusive and time-limited merchandise drops. BAYC announces on its official Twitter account what merchandise will be offered and how long it will be available. BAYC then

¹⁰⁹ See @OthersideMeta, Twitter (Apr. 25, 2022), <https://twitter.com/OthersideMeta/status/1518733999405137920> (accompanying thread includes all information and instructions); <https://otherside.xyz/>.

¹¹⁰ See *id.*

¹¹¹ See @apecoin, Twitter (Mar. 16, 2022, 3:02 PM), <https://twitter.com/apecoin/status/1504201556165644298> (accompanying thread includes all information and instructions).

1 tweets this verified link and directs BAYC club members to visit the site and use
2 ApeCoin to buy “merch.”¹¹² The site has recently been used in two distinct ways:

- 3 ○ On March 26, 2022, BAYC used its official Twitter account to announce a
4 limited-release merchandise drop available only to BAYC club members.¹¹³ The
5 “merch store” was open from March 28 to March 30, 2022 and sold “limited-time
6 only” items, including hoodies, t-shirts, blankets, and soccer jerseys.¹¹⁴ The
7 physical items were then shipped to the BAYC club members who ordered
8 them.¹¹⁵
- 9 ○ On June 22, 2022, BAYC used its official Twitter account to announce a new
10 collaboration between BAYC and Rolling Stone magazine, which included two art
11 prints of Rolling Stone covers depicting BAYC’s official Bored Ape known as
12 Curtis. The sale was open to both BAYC club members and the public for only a
13 four-hour window of time. BAYC posted the verified link to the merchandise site
14 on its Twitter account with instructions for purchasing the art.¹¹⁶ The physical
15 prints will be shipped to all customers who ordered them. Customers were also
16 instructed to go to OpenSea’s website where they would have three days to bid on
17 the animated NFT versions of the Rolling Stone/BAYC art collaboration. The two
18 winners of the auctions would receive the underlying NFT, but also a print of the
19

21
22 ¹¹² See <https://store.boredapeyachtclub.com/> (last visited June 22, 2022) (the store is currently closed).

23 ¹¹³ See @BoredApeYC, Twitter (Mar. 26, 2022, 2:57 PM),
24 <https://twitter.com/BoredApeYC/status/1507824163754745857>.

25 ¹¹⁴ See @BoredApeYC, Twitter (Mar. 27, 2022, 9:28 AM),
26 <https://twitter.com/BoredApeYC/status/1508103561510539266>.

27 ¹¹⁵ The BAYC club members responded enthusiastically upon receiving the physical items, which
28 came in special BAYC branded boxes. The BAYC Twitter feed is filled with posts and photos from
club members who were excited to show off their merch. See, e.g., @BoredApeSzn, Twitter (May
23, 2022, 5:25 PM), <https://twitter.com/BoredApeSzn/status/1528879897271099392>.

¹¹⁶ See @BoredApeYC, Twitter (June 22, 2022, 7:18 AM),
<https://twitter.com/BoredApeYC/status/1539598827577085955>.

art signed by the BAYC founders, the artist who created the image, and the CEO of Rolling Stone.¹¹⁷



- apefest.com – This website went live on June 8, 2022 and allowed BAYC club members 36 hours to request tickets to ApeFest 2022, which was an exclusive in-person music and art festival held at New York City’s Pier 17 on June 20-23, 2022. The website is also the official site for the event, with information regarding logistics, merchandise, rules, and an FAQ page. The official BAYC Twitter account provided the verified link in a tweet and directed BAYC club members to visit the site if they wanted to attend ApeFest 2022.
- store.apefest.com – This website is currently being used for all BAYC club members who attended ApeFest 2022 to purchase exclusive merchandise only available for this year’s event. The BAYC Twitter account provided the verified link and directed attendees to visit the link to purchase their “merch.”¹¹⁸

¹¹⁷ See @BoredApeYC, Twitter (June 22, 2022, 7:19 AM), <https://twitter.com/BoredApeYC/status/1539598893771628544>; @BoredApeYC, Twitter (June 22, 2022, 7:19 AM), <https://twitter.com/BoredApeYC/status/1539599005327527936>.

¹¹⁸ See @BoredApeYC, Twitter (June 20, 2022), <https://twitter.com/BoredApeYC/status/1539012093172666370>; <https://store.apefest.com/>.

1 79. Upon information and belief, BAYC has conducted transactions with Nevada
2 residents through each of the interactive websites listed above.

3 *The Theft of Mr. Armijo's NFTs*

4 80. On February 1, 2022, Mr. Armijo wanted to trade one of his Mutant Ape NFTs for
5 two or three NFTs of another popular NFT collection known as Cool Cats. Mr. Armijo went to the
6 Cool Cats Discord server around 10:00 a.m. (PT) and began negotiating with several members
7 through the chat feature.

8 81. Eventually, Mr. Armijo received an offer he liked from a user known as @Nodelee.
9 @Nodelee offered three Cool Cat NFTs for one of Mr. Armijo's Mutant Ape NFTs. Because they
10 were planning an NFT trade rather than a sale, they had to use a third-party NFT trading website to
11 facilitate the transaction. @Nodelee suggested several trading sites, but Mr. Armijo refused because
12 he was unfamiliar with them. Rather, Mr. Armijo proposed using a site called NFT Trader
13 (nfttrader.io). Mr. Armijo was familiar with the NFT Trader site because he had heard from several
14 reliable NFT community members on Twitter and Discord that NFT Trader was a legitimate and
15 trustworthy trading platform. @Nodelee claimed that he had never heard of or used NFT Trader
16 before but agreed to use the site to complete the transaction.

17 82. After a few minutes, @Nodelee posted in the Discord chat that he had uploaded the
18 three Cool Cat NFTs he was planning to trade onto the NFT Trader website, and the only thing left
19 was for Mr. Armijo to upload his Mutant Ape NFT to the site and approve the transaction. @Nodelee
20 sent Mr. Armijo a link to the NFT Trader website with the transaction details.

21 83. When Mr. Armijo clicked on the link, it took him to what appeared to be the NFT
22 Trader website. When completing a transaction on NFT Trader, there are two boxes, one for each
23 participant, which list the identifying information of the NFTs that are to be traded. This allows
24 participants to verify that the information is correct before approving the transaction.

25 84. Mr. Armijo verified that the one Mutant Ape NFT he intended to trade was listed in
26 his dialogue box and that the three Cool Cat NFTs that @Nodelee had offered were listed in
27 @Nodelee's dialogue box. When Mr. Armijo clicked the button to approve the trade, however,
28 nothing happened. He tried to approve the trade a few more times, but it still would not go through.

1 At that moment, Mr. Armijo noticed that the amount of Ether cryptocurrency he held in his digital
2 wallet had declined. He then checked his digital wallet to determine the problem and discovered that
3 his Bored Ape NFT and two Mutant Ape NFTs had vanished.

4 85. Mr. Armijo then realized he was the victim of a phishing attack. The link @Nodelee
5 had sent was actually connected to a fake website made to look like the real NFT Trader site. Every
6 time Mr. Armijo clicked the link to approve what he thought was a legitimate trade, he was actually
7 unwittingly allowing @Nodelee access to his digital wallet, which allowed @Nodelee to steal his
8 NFTs.

9 86. Mr. Armijo was devastated by the loss of his NFTs, and he immediately tried to
10 contact anyone who could help him recover them. Although the theft did not occur on OpenSea's
11 platform, Mr. Armijo suspected that the thief would list the stolen NFTs on OpenSea to try and sell
12 them as quickly as possible.

13 87. Mr. Armijo tried to find a phone number to contact OpenSea customer service, but no
14 such number exists. The only option available on OpenSea's website is to fill out a form to set up a
15 "help ticket" to report fraudulent activity. Mr. Armijo created multiple help tickets, desperately
16 pleading with OpenSea to not allow any sales of his stolen NFTs. He did not receive any responses to
17 his requests.

18 88. Mr. Armijo next went to OpenSea's Discord server. He posted several messages on
19 the customer service channel begging for help in locating his stolen NFTs. Although Mr. Armijo did
20 not receive an immediate response from anyone at OpenSea on the channel, he did find messages
21 from other users stating that they had filed help tickets with OpenSea customer service days or even
22 weeks prior and still had not received a response from OpenSea.

23 89. In desperation, Mr. Armijo next turned to BAYC for help. He went to the BAYC
24 Discord server and created a help ticket on BAYC's customer service channel. After a few minutes,
25 Mr. Armijo received a message from one of BAYC's "Community and Social Managers." Mr.
26 Armijo pleaded with the BAYC employee to help him by sending out a tweet from the BAYC
27 Twitter account alerting the community about the stolen BAYC NFTs and asking people not to buy
28 them and/or return them to Mr. Armijo.

1 90. The BAYC employee responded, explaining that the only thing BAYC could do was
2 reach out to OpenSea to try and expedite Mr. Armijo's help tickets. Although BAYC was "sorry to
3 hear" about what happened, the employee told Mr. Armijo that it was an issue between him and
4 OpenSea and there was nothing further BAYC could do to help him.

5 91. Mr. Armijo pressed the employee again to help him as a BAYC community member.
6 He also asked if BAYC could blacklist the stolen BAYC NFTs to deny them access to the
7 community in an attempt to disincentivize the theft. The employee retorted that BAYC could not do
8 anything further to help because "there are too many issues like this happening." The employee
9 further informed Mr. Armijo that BAYC can only try to "educate people how to be safe through
10 security."

11 92. Mr. Armijo also tried to reach out to LooksRare to ask for help, but the only method
12 of contacting LooksRare is through their Discord server, which already contained a post stating that
13 Discord refuses to freeze or remove any listed NFTs from their marketplace regardless of whether
14 they have been stolen.

15 93. While Mr. Armijo waited for a response from OpenSea, he reported the theft to the
16 cybercrimes unit of the FBI. The FBI has agreed to handle Mr. Armijo's case and try to find the
17 original thief, but it is unclear whether the FBI can recover the stolen BAYC NFTs or stop their
18 subsequent resells.

19 94. While Mr. Armijo was frantically trying to find anyone who could help him, he
20 watched helplessly as his Bored Ape NFT #4319 was listed for sale on OpenSea for 120 Ether—a
21 price well below its value at the time—and was then purchased by a new user around 2:00 p.m. (PT),
22 approximately two hours after the theft occurred.

23 95. About four hours after the sale of Mr. Armijo's Bored Ape NFT, an OpenSea
24 customer service representative finally contacted Mr. Armijo through email, explaining that OpenSea
25 would freeze the three BAYC NFTs that had been stolen from Mr. Armijo, which would not allow
26 them to be bought or sold on OpenSea's marketplace. However, this would not prevent the stolen
27 NFTs from being purchased or traded on any other NFT marketplaces. In response to Mr. Armijo's
28

questioning, the OpenSea representative wrote in another email that they did not know of any agencies who could assist Mr. Armijo in recovering his stolen property.

96. Due to the transparent nature of blockchain technology, Mr. Armijo has been able to find and track all three of his stolen BAYC NFTs. Following the freeze of the NFTs on OpenSea's marketplace, Mr. Armijo's two Mutant Ape NFTs were later listed and sold on LooksRare. Mutant Ape #1819 was sold on February 4, 2022. Mutant Ape #7713 was initially sold on February 14, 2022 and then again on February 16, 2022.

97. OpenSea has refused to contact the new owners of Mr. Armijo's NFTs to try and broker a return of the stolen property. Mr. Armijo has personally been able to contact one of the new owners, but they are unwilling to return the BAYC NFT without being compensated for the amount they paid for the stolen item.

BAYC and OpenSea Hacks

98. Vulnerability to hacks and scams is not limited to NFT consumers—indeed, BAYC and OpenSea have also fallen victim to targeted attacks, which resulted in the loss of millions of dollars' worth of stolen NFTs.

99. In January 2022, hackers exploited a bug in OpenSea's system that allowed the hackers to buy valuable NFTs for well below market value. Essentially, OpenSea users who had previously listed NFTs for sale on OpenSea and then removed the listings were being forced to sell their NFTs at the earlier, lower prices. Although the users thought they had delisted their NFTs, the hackers were still able to access the old listings and force a sale.¹¹⁹ In one 12-hour time period, hackers exploited the bug at least eight times to "steal" NFTs with a market value over \$1 million. One of the targets of the exploit was BAYC #9991, which was purchased for around \$1,700 and then quickly resold on OpenSea for around \$192,000.¹²⁰

¹¹⁹ Corin Faife, *An OpenSea Bug Let Attacker Snatch Apes from Owners at Six-Figure Discounts*, THE VERGE (Jan. 24, 2022, 12:20 PM EST), <https://www.theverge.com/2022/1/24/22899125/opensea-bug-bored-ape-nfts-smart-contract-listings-cancellation>.

¹²⁰ *Id.*

100. On or about February 19, 2022, OpenSea was the victim of a phishing attack, in which OpenSea users were targeted by hackers and tricked into digitally “signing” half-empty smart contracts. The hackers were then able to fill in the rest of the computer code missing from the smart contracts, which allowed them to drain the NFTs and other digital tokens from the victims’ digital wallets. The hack resulted in the theft of more than \$1.7 million worth of digital goods, including BAYC NFTs. The origins of the attack and the method the attackers used to target the victims is still unknown.¹²¹

101. On March 31, 2022, the official BAYC Discord server was hacked. BAYC posted a message on its Twitter account explaining that “a webhook in our Discord was briefly compromised” and warning BAYC club members and the public not to “mint anything right now.”¹²² The hacker had successfully posted a phishing link in the Mutant Ape Kennel Club channel, which resulted in the theft of at least one MAYC NFT.¹²³

102. On April 25, 2022, BAYC’s official Instagram account was hacked, and the hacker was able to share a link to a scam website. The linked website impersonated BAYC and falsely claimed that BAYC was offering free NFT land in its Otherside metaverse. The hacker stole more than \$2.8 million worth of NFTs, including BAYC NFTs, from people who connected their digital wallets.¹²⁴

103. On or about May 5, 2022, several of OpenSea’s Discord servers were hacked by a scammer who posted a link to a scam website that claimed to be an NFT mint in collaboration with

¹²¹ See Russell Brandom, *\$1.7 Million in NFTs Stolen in Apparent Phishing Attack on OpenSea Users*, THE VERGE (Feb. 20, 2022, 9:37 AM EST), <https://www.theverge.com/2022/2/20/22943228/opensea-phishing-hack-smart-contract-bug-stolen-nft>.

¹²² @BoredApeYC, Twitter (Mar. 31, 2022, 11:52 PM), <https://twitter.com/BoredApeYC/status/1509770607759540229>.

¹²³ See Vishal Chawla, *Bored Ape Yacht Club Confirms its Discord was Hacked*, THE BLOCK (Apr. 1, 2022, 2:45 AM EDT), <https://www.theblock.co/linked/140102/bored-ape-yacht-club-confirms-its-discord-was-hacked>.

¹²⁴ See Andrew Hayward, *Bored Ape Yacht Club Instagram Hacked, \$2.8M in Ethereum NFTs Stolen*, DECRYPT (Apr. 25, 2022), <https://decrypt.co/98614/bored-ape-yacht-club-instagram-hacked-ethereum-nfts-stolen>.

1 YouTube. Although the hack affected less than ten digital wallets, around \$26,000 of NFTs were
2 stolen.¹²⁵

3 104. On June 4, 2022, a hacker targeted Boris Vagner, BAYC's community manager,
4 compromising Vagner's Discord account, which then allowed the attacker to post phishing links on
5 both of the official BAYC and Otherside Discord servers. The hacker stole \$360,000 worth of NFTs,
6 including BAYC NFTs.¹²⁶ In a tweet acknowledging the hack, one of BAYC's founding members,
7 who goes by the pseudonym Gordon Goner, blamed Discord for the hack, stating "Discord isn't
8 working for Web 3 communities. We need a better platform that puts security first."¹²⁷

9 105. The prevalence and ubiquity of these scams and hacks that victimize BAYC NFT
10 owners have not gone unnoticed by Twitter users, with one user stating:¹²⁸



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16 *The Harm Suffered by Mr. Armijo Was Foreseeable*

17 106. Mr. Armijo's ordeal is not a unique experience for owners of valuable NFTs,
18 especially those who own BAYC NFTs. As BAYC's own employee acknowledged to Mr. Armijo,
19 "there are too many issues like this happening." Defendants are aware of the heightened risk for NFT
20

21
22
23 ¹²⁵ See Marco Quiroz-Gutierrez, *Not Even Crypto's Biggest Names are Safe as NFT Marketplace*
24 *OpenSea's Discord Channels Infiltrated by a Hacker Promoting a Scam Drop*, FORTUNE (May 6,
25 2022, 10:45 AM MDT), [https://fortune.com/2022/05/06/opensea-discord-hacked-nfts-stolen-](https://fortune.com/2022/05/06/opensea-discord-hacked-nfts-stolen-phishing-scams/)
26 [phishing-scams/](https://fortune.com/2022/05/06/opensea-discord-hacked-nfts-stolen-phishing-scams/).

27 ¹²⁶ See Eli Tan and CoinDesk, *Bored Ape Yacht Club's Dicord Server Was Hacked, with \$360,000*
28 *in NFTs Stolen. Who's to Blame is Debated*, FORTUNE (June 4, 2022, 4:03 PM MDT),
[https://fortune.com/2022/06/04/bored-ape-yacht-clubs-discord-server-was-hacked-with-360000-in-](https://fortune.com/2022/06/04/bored-ape-yacht-clubs-discord-server-was-hacked-with-360000-in-nfts-stolen-blame-debated/)
[nfts-stolen-blame-debated/](https://fortune.com/2022/06/04/bored-ape-yacht-clubs-discord-server-was-hacked-with-360000-in-nfts-stolen-blame-debated/).

¹²⁷ *Id.*

¹²⁸ @Martin18442224, Twitter (Apr. 4, 2022, 11:43 PM),
<https://twitter.com/Martin18442224/status/1511217951072002055>.

1 consumers but have utterly failed to protect consumers or do anything to disincentivize or stop the
2 thefts.

3 107. Sometime in August 2021, an NFT enthusiast named Jeff Nicholas was seeking
4 customer service help on OpenSea's Discord server.¹²⁹ Nicholas fell victim to scammers who
5 impersonated OpenSea employees and then led him to a fake OpenSea customer service channel. The
6 thieves were able to gain access to Nicholas's digital wallet and drain it of all the NFTs he had stored
7 there, including multiple Bored Ape NFTs. The damage totaled roughly \$480,000.¹³⁰

8 108. The thieves who attacked Nicholas used pseudonyms and anonymous digital wallets,
9 and they unloaded the stolen goods by immediately listing and selling them on OpenSea. By the time
10 OpenSea finally responded to Nicholas's pleas for help and froze the stolen NFTs, they had already
11 been sold to individuals who had no idea they were purchasing stolen property.¹³¹ The thieves eluded
12 identification and punishment while Nicholas and the innocent subsequent purchasers were left
13 without recourse from OpenSea.

14 109. In November 2021, another NFT collector named Calvin Becerra was attacked by
15 scammers who stole his three Bored Ape NFTs, which were purportedly worth more than one million
16 dollars.¹³² The thieves posed as NFT buyers on a Discord channel and pretended to help Becerra fix a
17 problem with his digital wallet, but instead stole his entire NFT collection.¹³³

18 110. Although OpenSea eventually froze the stolen Bored Ape NFTs on its platform, it did
19 not do so until Becerra posted news of the theft on Twitter, begging the NFT community not to
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21 ¹²⁹ See Wang, *supra* note 27.

22 ¹³⁰ *Id.*

23 ¹³¹ *Id.*

24 ¹³² See Will Gottsegen, *Ape Theft is an Expensive Way to Learn About Crypto's Security*
25 *Philosophy*, COINDESK (Jan. 3, 2022, 2:14 PM MST),
26 [https://www.coindesk.com/layer2/2022/01/03/ape-theft-is-an-expensive-way-to-learn-about-cryptos-](https://www.coindesk.com/layer2/2022/01/03/ape-theft-is-an-expensive-way-to-learn-about-cryptos-security-philosophy/)
27 [security-philosophy/](https://www.coindesk.com/layer2/2022/01/03/ape-theft-is-an-expensive-way-to-learn-about-cryptos-security-philosophy/); see also Lorenzo Franceschi-Bicchierai, *Man Upset That Hackers Stole His*
28 *Bored Ape NFTs*, VICE (Nov. 3, 2021, 7:00 AM), [https://www.vice.com/en/article/qjb4nq/investor-](https://www.vice.com/en/article/qjb4nq/investor-says-bored-ape-nfts-were-stolen-by-hackers)
[says-bored-ape-nfts-were-stolen-by-hackers](https://www.vice.com/en/article/qjb4nq/investor-says-bored-ape-nfts-were-stolen-by-hackers).

¹³³ Franceschi-Bicchierai, *supra* note 132.

1 purchase the stolen NFTs and to return them to their rightful owner. The posts went viral, and
 2 Becerra credited his complaints with convincing OpenSea to finally freeze the stolen goods.¹³⁴

3 111. In December 2021, Todd Kramer had eight Bored Ape NFTs and seven Mutant Ape
 4 NFTs stolen when a phishing scam gained access to his digital wallet after Kramer clicked on a
 5 malicious link. The fifteen BAYC NFTs had a combined value of \$2.2 million.¹³⁵ Kramer frantically
 6 posted a series of tweets on his Twitter account, pleading for help from OpenSea and the NFT
 7 community to retrieve his stolen property. It was not until five hours later that OpenSea froze the
 8 stolen BAYC NFTs after many of them had already been sold to new owners.¹³⁶

9 112. In January 2022, a Twitter user who goes by the name larrylawliet was tricked by
 10 scammers into approving access to his digital wallet. The thieves stole one Bored Ape NFT and five
 11 Mutant Ape NFTs and then immediately sold the entire group on OpenSea for just under \$700,000.¹³⁷
 12 Larrylawliet claims the BAYC NFTs' true value was \$2.7 million, but the thieves undersold the
 13 NFTs because they needed to immediately offload the stolen goods before they were frozen by
 14 OpenSea.¹³⁸ Currently, the stolen NFTs are listed as frozen on OpenSea's marketplace, but the
 15 thieves have eluded identification and punishment.

16 113. On May 8, 2022, the actor Seth Green (from the popular Austin Power movie series)
 17 fell victim to a phishing scam and had four of his valuable NFTs stolen, including one BAYC NFT
 18 and two MAYC NFTs.¹³⁹ Green had purchased the BAYC NFT, known as Fred Simian, in July of

19
 20 ¹³⁴ *Id.*

21 ¹³⁵ See Brian Newar, *OpenSea Freezes \$2.2M of Stolen Bored Apes*, COINTELEGRAPH (Dec. 31,
 22 2021), <https://cointelegraph.com/news/opensea-freezes-2-2m-of-stolen-bored-apes>.

23 ¹³⁶ See Shanti Escalante-De Mattei, *Thieves Steal Gallery Owner's Multimillion-Dollar NFT*
 24 *Collection: 'All My Apes Gone,'* ARTNEWS (Jan. 4, 2022, 5:23 PM), [https://www.artnews.com/art-](https://www.artnews.com/art-news/news/todd-kramer-nft-theft-1234614874/)
 25 [news/news/todd-kramer-nft-theft-1234614874/](https://www.artnews.com/art-news/news/todd-kramer-nft-theft-1234614874/).

26 ¹³⁷ See Lorenzo Franceschi-Bicchierai, *NFT Collector 'ILovePonzi' Loses Valuable Ape NFTs to*
 27 *Hackers, Is Upset*, VICE (Feb. 1, 2022, 5:10 PM), [https://www.vice.com/en/article/5dg5xq/nft-](https://www.vice.com/en/article/5dg5xq/nft-collector-iloveponzi-loses-valuable-ape-nfts-to-hackers-is-upset)
 28 [collector-iloveponzi-loses-valuable-ape-nfts-to-hackers-is-upset](https://www.vice.com/en/article/5dg5xq/nft-collector-iloveponzi-loses-valuable-ape-nfts-to-hackers-is-upset).

¹³⁸ *Id.*

¹³⁹ See Sarah Emerson, *Someone Stole Seth Green's Bored Ape, Which Was Supposed to Star in His*
New Show, BUZZFEED NEWS (May 24, 2022, 9:27 AM),
<https://www.buzzfeednews.com/article/sarahemerson/seth-green-bored-ape-stolen-tv-show>.

2021, and spent the past several months developing a TV show centered on Fred Simian, which was on the eve of its debut. The theft attracted international media attention as questions were raised regarding legal issues surrounding the transfer of IP rights when a BAYC NFT is stolen and whether or not Green would still be able to use Fred Simian in his TV show.¹⁴⁰

114. Green's Fred Simian eventually ended up in the vault of a pseudonymous collector known as "DarkWing84."¹⁴¹ Green spent weeks reaching out to DarkWing84 over Twitter before he was finally able to negotiate the return of Fred Simian sometime in early June in exchange for the sum of \$297,000. Green, unlike most other victims of BAYC NFT thefts, was able to leverage his celebrity status, wealth, and the frenzied media coverage to bring Fred Simian "back home."¹⁴²

115. Upon information and belief, the preceding examples are only a small sampling of the number of BAYC NFT thefts that have occurred since BAYC launched in April 2021.

116. At a minimum, Defendants knew as early as August 2021 that BAYC NFT owners were being targeted and attacked by NFT scammers and thieves. Yet, they failed to implement any proactive measures to deter such attacks and protect BAYC club members and NFT consumers who used their platforms.

117. In light of the long list of similar events, the harm suffered by Mr. Armijo was foreseeable, and Defendants' negligent inaction incentivized thieves to continue to prey on vulnerable NFT consumers.

Lack of Government Regulations

118. The U.S. government does not currently regulate NFTs specifically. The government's lack of regulation is likely to change, however, at both the federal and state levels. This is due to NFTs' meteoric rise in popularity, as well as the potential harms associated with digital transfers.

119. While there are currently limited regulations for cryptocurrencies, NFTs often fall outside the umbrella of U.S. regulations because the government and its agencies have primarily had

¹⁴⁰ *Id.*

¹⁴¹ See Sarah Emerson, *Seth Green's Stolen Bored Ape is Back Home*, BuzzFeed News (June 9, 2022, 12:21 PM), <https://www.buzzfeednews.com/article/sarahemerson/seth-green-bored-ape-nft-returned>.

¹⁴² *Id.*

1 difficulty categorizing NFTs. However, both legislators and regulators are currently seeking ways to
2 place guardrails around digital assets, including NFT transactions.

3 120. NFTs are comparably functional when juxtaposed with digital currencies. NFTs have
4 several forms of utility, serving to provide both identification and status in a digital context and also
5 intellectual property rights. While both NFTs and cryptocurrencies such as Bitcoin are digital stores
6 of value, NFTs are comparably complex as they perform more like functional digital art than a means
7 of transferring value from one party to the next.¹⁴³

8 121. Government officials are actively speaking out on impending NFT regulations.
9 Recently, government officials in the SEC noted that they believe some NFTs could currently be
10 considered securities.¹⁴⁴ Under the *Howey Test*, a security is defined as an investment in a “common
11 enterprise” with the expectation that the efforts of others will increase the value of the investment.¹⁴⁵

12 122. Some NFTs are fractionalized and sold in slices, comparable to a stock.¹⁴⁶ Some
13 developers and creators, including BAYC, retain ownership over a certain number of their NFTs.¹⁴⁷
14 A maintained interest by owners in such an enterprise calls for regulations to protect consumers.

15 123. Additionally, the Federal Trade Commission has noted its power under 15 U.S.C. § 45
16 to utilize laws governing unfair or deceptive acts or practices (UDAP) against misinformation
17 flowing through the NFT advertising, sales, and reselling process.¹⁴⁸

19 ¹⁴³ See Patrick Ryan, *NFT Regulation is on the Horizon*, THE DALES REPORT (Dec. 28, 2021),
20 <https://thedalessreport.com/crypto-nfts/nft-regulation-is-on-the-horizon/>.

21 ¹⁴⁴ See Sophie Kiderlin, *The SEC's 'Crypto Mom' Hester Peirce Says Selling Fractionalized NFTs*
22 *Could Be Illegal*, BUSINESS INSIDER (Mar. 26, 2021, 7:52 AM EST),
23 <https://markets.businessinsider.com/currencies/news/sec-crypto-mom-hester-peirce-selling-nft-fragments-illegal-2021-3-1030250153>.

24 ¹⁴⁵ *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

25 ¹⁴⁶ See Will Gottsegen, *Some NFTs Are Probably Illegal. Does the SEC Care?*, COINDESK (Oct. 20,
26 2021, 12:57 PM PST), <https://www.coindesk.com/policy/2021/10/20/some-nfts-are-probably-illegal-does-the-sec-care/>.

27 ¹⁴⁷ See Rahul Nambiapurath, *Bored Ape Yacht Club Explained: What is BAYC?*, BE[IN]CRYPTO
28 (Sept. 20, 2021, 14:12 GMT), <https://beincrypto.com/learn/bored-ape-yacht-club-bayc/> (“The twist is that after they enter the secondary market, the BAYC collection will have a 2.5% royalty fee attached to each sale.”).

124. Because digital assets are inherently cross-border by nature, the selling and trading of NFTs raises complex issues of applicable law and regulation.¹⁴⁹ In the European Union, Luxembourg recently grouped NFTs into three specific categories: collective investment instruments, electronic money, and financial instruments, each of which has its own qualities and regulations.¹⁵⁰

125. The existing EU and UK anti-money laundering rules applicable to certain art market participants could apply as well when parties are involved in the sale of NFTs for an amount of €10,000 or more.¹⁵¹ Such parties would be required to implement a risk-based “anti-money laundering program”; conduct initial and ongoing client due diligence, which includes identifying and verifying clients’ identity; document such diligence and maintain records; monitor for politically exposed persons (PEPs) and adverse media; monitor transactions for suspicious activity; and submit suspicious activity reports.¹⁵²

126. Government regulation is necessary because of the gravely serious risk factors associated with NFTs regarding money laundering, tax evasion, and terrorist financing. Such fears were confirmed on February 4, 2022, when the U.S. Department of the Treasury issued a report warning that high-value NFTs present a significant risk of being used for money laundering.¹⁵³

¹⁴⁸ See Chugani, Bank, & Levine, *The Notorious NFT: Consumer Protection Issues Raised by Non-Fungible Tokens (NFTs)*, REED SMITH LLP (Apr. 15, 2021), [https://uk.practicallaw.thomsonreuters.com/w-0304989?originationContext=knowHow&transitionType=KnowHowItem&contextData=\(sc.DocLink\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-0304989?originationContext=knowHow&transitionType=KnowHowItem&contextData=(sc.DocLink)&firstPage=true).

¹⁴⁹ See Werner Vermaak, *MiCA: A Guide to the EU’s Proposed Markets in Crypto-Assets Regulation*, SYGNA (last visited Feb. 28, 2022), <https://www.sygna.io/blog/what-is-mica-markets-in-crypto-assets-eu-regulation-guide/>.

¹⁵⁰ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD5), Article 1(1)(c)(i).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See Nikhilesh De, *US Treasury Department Warns of NFT Risk in Art-Related Money Laundering*, COINDESK (Feb. 4, 2022, 12:29 PM MST), <https://www.coindesk.com/policy/2022/02/04/us-treasury-department-warns-of-nft-risk-in-art-related-money-laundering/>.

Specifically, entities—such as the defendants in this case—that have large sales turnover and regularly transact in high-value art in the regular course of business present a higher risk for being used by criminals involved in money laundering activities.¹⁵⁴ To address the risks, the Treasury recommended consideration of several options, including: encouraging the creation of private-sector information sharing programs to promote transparency among art market participants; using FinCEN recordkeeping authorities to support information collection and greater due diligence; and obligating certain art-market participants to create and maintain anti-money laundering and know-your-customer requirements.¹⁵⁵

127. U.S. Congressional committees and government agencies have deliberated over the last three years to grasp what digital assets truly mean for the global and domestic economy.¹⁵⁶ Most recently, Congress appeared determined to even classify crypto miners as “brokers,” thus requiring them to adhere to the same reporting standards as banks or brokerages.¹⁵⁷

128. Such regulation is necessary and appropriately involves parties who are involved in the marketing and sales of NFTs, as NFTs have become a booming target for scams and theft.

129. With no government regulations currently in place, highly susceptible and unsophisticated investors are at risk with little to no recourse against bad actors and those who facilitate the illegal sales of stolen digital assets.

130. Defendants, who have a direct financial interest in the facilitation of NFT sales, have a duty to ensure that NFT consumers are provided with safeguards and recourse from harm. That duty is heightened when there are no government regulations in place that could provide a background set of rules that would mitigate the risk of harm NFT consumers face.

¹⁵⁴ Press Release, U.S. Dept. of the Treasury, Treasury Releases Study on Illicit Finance in the High-Value Art Market (Feb. 4, 2022), <https://home.treasury.gov/news/press-releases/jy0588>.

¹⁵⁵ *Id.*

¹⁵⁶ See Adrian Krion, *NFT Regulation Looms Large, So Let's Start with the Proper Framework*, NASDAQ (Nov. 9, 2021 9:58 AM EST), <https://www.nasdaq.com/articles/nft-regulation-looms-large-so-lets-start-with-the-proper-framework>.

¹⁵⁷ *Id.*

1 *Defendants' Inadequate Security Practices Failed to Protect NFT Consumers*

2 131. Blockchains and the technology associated with them may be decentralized in theory,
3 but not in practice. Defendants are centralized entities in that they do not share governance with their
4 communities or the wider NFT consumer base. Defendants designed their platforms, chose the
5 security measures they deemed necessary, and determined the level of customer service they wanted
6 to offer. Any decisions regarding how to conduct Defendants' business operations continue to be
7 made at a centralized level. As such, Defendants are centralized entities that act as intermediaries
8 between the real world and the decentralized world of digital assets created on blockchains.

9 132. Implementing basic fraud and theft protections, verifying user identities, maintaining
10 adequate records, addressing customer concerns, and providing recourse if things go wrong are
11 easiest to execute in a centralized environment. Given that the NFT economy is based on immediate
12 and irreversible blockchain ledger entries, centralized intermediaries owe NFT consumers a duty to
13 monitor their platforms to prohibit the sale of stolen goods and implement robust security measures
14 to protect vulnerable consumers.

15 *OpenSea's Inadequate Security Practices*

16 133. Prior to the theft of Mr. Armijo's BAYC NFTs, OpenSea cofounder, Alex Atallah,
17 acknowledged the "huge responsibility" OpenSea has to create standards for the new NFT
18 community.¹⁵⁸ Particularly, Atallah explained that OpenSea is "on a mission to build the world's
19 most trusted and inclusive NFT marketplace."¹⁵⁹ Although OpenSea is aware of its duty to protect
20 consumers and provide a platform that is free from fraud and theft, it has failed to live up to its own
21 standards.

22 134. OpenSea was founded in 2017 with an initial funding round of \$2 million from
23 Founders Fund and other industry-leading crypto firms.¹⁶⁰

24
25 ¹⁵⁸ See Atallah, *Important Updates for Listing and Delisting Your NFTs*, *supra* note 12.

26 ¹⁵⁹ See Alex Atallah, *OpenSea's Bug Bounty Program*, OPENSEA BLOG (Jan. 12, 2022),
27 <https://opensea.io/blog/safety-security/openseas-bug-bounty-program/>.

28 ¹⁶⁰ See Dean Takahashi, *OpenSea Raises \$100M at \$1.5B Valuation for NFT Marketplace*,
VentureBeat (July 20, 2021, 3:00 AM), <https://venturebeat.com/2021/07/20/opensea-raises-100m-at-1-5b-valuation-for-nft-marketplace/>.

1 135. From the time OpenSea officially launched in February 2018 until the NFT market
 2 began to grow in February 2021, OpenSea maintained a small team of employees that handled a
 3 small volume of yearly transactions. At 2020 year's end, OpenSea employed seven people and
 4 processed only \$94.8 million in NFT sales volume for the entire year.¹⁶¹

5 136. In March 2021, following the rise of popularity in NFTs, OpenSea announced a \$23
 6 million-dollar institutional funding round led by venture capital firm Andreessen Horowitz, which
 7 would be used to grow the platform and hire engineers and other technical staff.¹⁶²

8 137. In July 2021, OpenSea processed \$350 million in NFT sales.¹⁶³ The company was
 9 valued at \$1.5 billion and received \$100 million in a Series B funding round again led by Andreessen
 10 Horowitz.¹⁶⁴ OpenSea planned to use the funds to hire engineering talent, expand internationally to
 11 new markets, and make more ways for users to easily access, buy, and sell NFTs.¹⁶⁵ There were no
 12 plans to invest in security or theft deterrents.

13 138. In August 2021, the NFT craze reached a fever pitch, leading to a monthly transaction
 14 volume on OpenSea of \$3.4 billion, which produced an \$85 million commission windfall for the
 15 company.¹⁶⁶ OpenSea's monthly expenses at the time were likely around \$5 million.¹⁶⁷ At the time,
 16 OpenSea had a team of 37 employees and were desperately searching for new staff to deal with the
 17 onslaught of new customers.¹⁶⁸

19 ¹⁶¹ See Tim Fries, *How OpenSea Captured 97% of the NFT Market*, THE TOKENIST (Nov. 11, 2021),
 20 <https://tokenist.com/how-opensea-captured-97-of-the-nft-market/>.

21 ¹⁶² See Takahashi, *supra* note 160.

22 ¹⁶³ See Jeff Kauflin, *What Every Crypto Buyer Should Know About OpenSea, the King of the NFT*
 23 *Market*, FORBES (Nov. 23, 2021 6:30 AM EST),
 24 [https://www.forbes.com/sites/jeffkauflin/2021/11/23/what-every-crypto-buyer-should-know-about-](https://www.forbes.com/sites/jeffkauflin/2021/11/23/what-every-crypto-buyer-should-know-about-opensea-the-king-of-the-nft-market/?sh=7d2364e82f89)
 25 [opensea-the-king-of-the-nft-market/?sh=7d2364e82f89](https://www.forbes.com/sites/jeffkauflin/2021/11/23/what-every-crypto-buyer-should-know-about-opensea-the-king-of-the-nft-market/?sh=7d2364e82f89).

26 ¹⁶⁴ See Haverstock, *supra* note 10.

27 ¹⁶⁵ See Takahashi, *supra* note 160.

28 ¹⁶⁶ See Kauflin, *supra* note 163.

¹⁶⁷ *Id.*

¹⁶⁸ See Tim Fries, *With a Team of 37, OpenSea Exceeded \$3 Billion in August's Trading Volume*, THE TOKENIST (Aug. 30, 2021), <https://tokenist.com/with-team-of-37-opensea-exceeded-3-billion->

1 139. On August 18, 2021, OpenSea co-founder, Devin Finzer, participated in a podcast
 2 interview with NFT Now. During the interview, Finzer acknowledged that the astronomical growth
 3 took everyone by surprise and that the OpenSea team was “now in catch-up mode of company
 4 building.”¹⁶⁹ Finzer went on to explain that “fraud is becoming a really big thing,” and the company
 5 must focus on “improving trust” and “investing in those simple things” that can help improve the
 6 user experience.¹⁷⁰ However, when asked about OpenSea’s goals for the near future, Finzer stated
 7 that general growth was the company’s focus, including developing better search functions, easier
 8 fiat on-ramping, better notification systems, and better multichain support.¹⁷¹ Finzer did not mention
 9 any plans to improve security or consumer protections.

10 140. In December 2021, OpenSea processed more than \$3.3 billion in sales, generating
 11 around \$82.5 million in revenue.¹⁷² The company also announced that it had raised \$300 million in a
 12 Series C funding round led by venture capital firms Paradigm and Coatue.¹⁷³ OpenSea stated that it
 13 planned to use the funds for product development, hiring, and to significantly improve customer
 14 support and customer safety.¹⁷⁴

15 141. The number of OpenSea’s employees increased from 37 in July 2021 to around 70 by
 16 the end of 2021.¹⁷⁵

17 142. Despite OpenSea’s meteoric growth over the past year, OpenSea has prioritized
 18 growth over consumer safety and the security of consumer’s digital assets. For example, in
 19

20
 21 august-monthly-trading-volume/.

22 ¹⁶⁹ See NFT NOW PODCAST, *supra* note 23 at 24:16.

23 ¹⁷⁰ *Id.* at 24:40.

24 ¹⁷¹ *Id.* at 30:07.

25 ¹⁷² See Haverstock, *supra* note 10.

26 ¹⁷³ *Id.*

27 ¹⁷⁴ See Zack Seward, *NFT Marketplace OpenSea Valued at \$13.3B in \$300M Funding Round*,
 COINDESK (Jan. 4, 2022, 6:52 PM MST), <https://www.coindesk.com/business/2022/01/05/nft-marketplace-opensea-valued-at-133b-in-300m-funding-round-report/>.

28 ¹⁷⁵ See Haverstock, *supra* note 10.

1 OpenSea’s early days, the company utilized an approval process to screen NFTs prior to listing them
2 on the OpenSea marketplace. The process was intended to combat abuse by screening NFTs for
3 possible theft or copyright violations.¹⁷⁶ But OpenSea canceled the review process in March 2021,
4 following the initial surge in NFT sales. An OpenSea spokesperson stated that the decision to roll
5 back the screening process “was made to better reflect OpenSea’s commitment to enabling
6 decentralized economies.”¹⁷⁷

7 143. Without a careful screening process in place (like the one it previously used),
8 OpenSea has no way to determine whether the NFTs uploaded to its platform have been stolen.
9 OpenSea does nothing to proactively stop illegal sales before they occur. This is especially
10 problematic because once sales are recorded on the blockchain, OpenSea claims that it cannot do
11 anything to help consumers because blockchain transactions are irreversible. OpenSea has sacrificed
12 consumer safety and the security of consumer’s digital assets for convenience.

13 144. OpenSea’s limited customer service options are ineffectual at best. When OpenSea
14 does act on behalf of consumers, its responses are slow and uneven.¹⁷⁸ As previously stated, OpenSea
15 does not have a dedicated customer service phone number or instant chat feature on its website, and
16 “help tickets” sent by victims of theft are ignored for days or weeks at a time. After filing a help
17 ticket, most aggrieved consumers receive a message from OpenSea stating that “due to our support
18 ticket volume, our responses can take up to a week.”¹⁷⁹ This response is completely unhelpful to a
19 person who has just had millions of dollars’ worth of their property stolen and they are trying
20 desperately to stop the thieves from immediately selling it off at bargain prices before OpenSea
21 eventually freezes the stolen assets.

22 145. OpenSea is aware and has acknowledged that its customer service responses are
23 inadequate. In a blog post on October 4, 2021, OpenSea recommended that users protect themselves
24

25 ¹⁷⁶ See Scheck, *supra* note 21.

26 ¹⁷⁷ *Id.*

27 ¹⁷⁸ *Id.*

28 ¹⁷⁹ *Id.*

from scammers by only receiving help from official OpenSea customer support.¹⁸⁰ However, the post also stated that “customer support is never as fast as we want it to be (we’re working on it).” Individuals only have two choices: wait for official OpenSea support that could take more than a week or expose themselves to potential scammers if they seek help elsewhere.

146. OpenSea frequently refers to itself as the “eBay” or “Amazon of cryptogoods.” However, unlike eBay or Amazon, OpenSea has failed to adequately scale its customer support services or create a dedicated fraud department. For example, Amazon has more than 10,000 employees dedicated solely to fighting fraud on its platform. OpenSea currently has only 70 employees in total, none identified as being solely for fighting fraud.

OpenSea’s failure to implement proactive theft detection methods, along with its failure to provide adequate customer service, has created a situation that incentivizes thieves to target and attack individuals who own valuable NFTs. As the leading NFT marketplace with hundreds of millions of dollars at its disposal, OpenSea has a duty to provide basic consumer protections for the NFT community.

LooksRare’s Inadequate Security Practices

147. LooksRare launched its NFT marketplace on January 10, 2022, billing itself as the “the community-first NFT marketplace with rewards for trading.”¹⁸¹ However, in the time since LooksRare has been in operation, it has done several things to cause concern among the NFT community.

a. The LooksRare founders are identified only by their pseudonyms, “Zodd” and “Guts.”¹⁸² There is also no address, phone number, or company information of any kind listed on LooksRare’s website or its Discord server.

¹⁸⁰ See Barnes, *supra* note 14.

¹⁸¹ See Elizabeth Howcroft, *Unreal Demand? Irregular Sales Worth Billions Fire Up Wild NFT Market*, Reuters (Feb. 7, 2022, 3:55 PM MST), <https://www.reuters.com/technology/unreal-demand-irregular-sales-worth-billions-fire-up-wild-nft-market-2022-02-07/>.

¹⁸² *Id.*

b. In a blog post on January 1, 2022, the LooksRare team stated that it was launching its NFT marketplace as soon as possible, which meant that “some stuff might not be working totally smoothly right off the bat.”¹⁸³

c. At the time of its debut, LooksRare launched unaudited and without a public GitHub repo.¹⁸⁴ GitHub is an online platform used by computer programmers to share computer code among collaborators. Because LooksRare does not allow the public to view the code its platform uses, many NFT consumers see this as a red flag.

148. Following LooksRare’s launch, the platform immediately attracted attention for its enormous daily sales volumes that more than doubled OpenSea’s numbers on only the second day of LooksRare’s operability.¹⁸⁵ Within three weeks, LooksRare generated at least \$10.8 billion in trading volume.¹⁸⁶ However, LooksRare averaged less than 3,500 sales per day, compared with OpenSea’s 57,000-90,000 transactions per day.¹⁸⁷ Technology researchers characterize the high-value transactions occurring on LooksRare as “wash trades.”¹⁸⁸ Wash trades occur when an individual buys and sells an asset multiple times while acting as both the buyer and the seller simultaneously. Wash trading gives a false impression of demand for an asset and has been banned from traditional markets in the U.S. since 1936.¹⁸⁹

149. In its report highlighting the risks of money laundering associated with high-value NFT trading, the Treasury Department explicitly addressed wash trading, stating, “NFTs can be used to conduct self-laundering, where criminals may purchase an NFT with illicit funds and proceed to

¹⁸³ *The NFT Marketplace You’ve Been Waiting For*, LOOKSRARE BLOG (Jan. 1, 2022), <https://docs.looksrare.org/blog/the-nft-marketplace>.

¹⁸⁴ See Ryan Sean Adams, *Looks Rare, The Community-Owned Competitor to OpenSea is Here. Is it Legit?*, BANKLESS (Jan. 15, 2022), https://newsletter.banklesshq.com/p/looks-rare?utm_source=url.

¹⁸⁵ See Hu, *supra* note 18.

¹⁸⁶ See Howcroft, *supra* note 181.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See Hu, *supra* note 18.

1 transact with themselves to create records of sales on the blockchain ... The NFT could then be sold
2 to an unwitting individual who would compensate the criminal with clean funds not tied to a prior
3 crime.”¹⁹⁰

4 150. As previously explained, LooksRare refuses to freeze or remove any NFTs listed on
5 its marketplace regardless of whether the NFT has been stolen.

6 151. LooksRare’s website encourages users to “scope out the market” for high-value NFTs
7 on its platform, including Bored Ape and Mutant Ape NFTs.¹⁹¹

8 152. LooksRare’s failure to implement any type of consumer protections puts the entire
9 NFT community at significant risk for attacks from thieves and scammers. LooksRare’s negligent
10 and reckless actions have created a situation that incentivizes thieves to target and attack individuals
11 who own valuable NFTs and also encourages money laundering.

12 153. LooksRare’s refusal to provide any identifying information regarding its co-founders,
13 management team, business registration, physical address, telephone number, or email address
14 further harms the NFT community because NFT consumers are denied the ability to find and hold
15 LooksRare accountable when illegal activities occur on its platform. LooksRare’s anonymity
16 encourages a culture of lawlessness and criminality—teams of developers are allowed to create
17 blatantly harmful platforms without responsibility for the harm they cause to NFT consumers and the
18 NFT community at large.

19 *BAYC’s Inadequate Security Practices*

20 154. Each individual Bored Ape and Mutant Ape NFT includes a number designating the
21 NFT’s official place in the two separate groups of NFT collections. BAYC club members cannot
22 access the special perks of ownership without first verifying that they own and possess a numbered
23 BAYC NFT (or affiliate NFT). The verification process is done through technological review of the
24 blockchain ledger, which clearly tracks the history of each BAYC NFT.

26
27 ¹⁹⁰ See De, *supra* note 153.

28 ¹⁹¹ See *LooksRare NFT Marketplace & Token Launch – Now Live!*, LOOKSRARE BLOG (Jan. 10, 2022), <https://docs.looksrare.org/blog/launch-post>.

155. Upon being alerted that a specific BAYC NFT was reported to law enforcement as stolen, BAYC could block the holder of the specific NFT in question from accessing BAYC club membership benefits or exercising any commercial rights associated with the underlying image, thereby stripping the BAYC NFT of its utility.

156. BAYC's failure to implement a policy to discourage the use of stolen NFTs to access the BAYC club puts owners of BAYC NFTs at significant risk for targeted attacks from scammers and thieves. As the leading NFT community with hundreds of millions of dollars at its disposal, BAYC has a duty to provide basic consumer protections for BAYC club members.

157. The lack of security and consumer protections offered by BAYC is a frequent topic among NFT enthusiasts on Twitter, who repudiate BAYC for failing to protect its club members.¹⁹²



158. Moreover, BAYC promises that with the purchase of a BAYC NFT, the buyer is “gaining membership access to a club whose benefits and offerings will increase over time.” By denying the rightful owner of the BAYC NFT club membership, BAYC is breaching express promises and duties to club members.

Mr. Armijo Suffered Substantial Damages

159. The theft of Mr. Armijo's BAYC NFTs deprived Mr. Armijo of the NFTs he owned and their significant monetary values. BAYC also wrongfully stripped Mr. Armijo of his membership in the BAYC club, a club he paid significant consideration to join on the promise that he was gaining membership access to a club whose benefits and offerings will increase over time. In addition, the

¹⁹² See, e.g., @charliemktplace, Twitter (Apr. 5, 2022, 6:57 AM), <https://twitter.com/charliemktplace/status/1511327134438068233>.

1 BAYC club is much more than a commercial endeavor. As explained above, the BAYC club is a
 2 collaborative and exclusive space of likeminded people who treat each other like family. Being a
 3 BAYC club member means being a part of a cultural movement like no other where the perks and
 4 opportunities only continue to grow over time.

5 160. The theft of Mr. Armijo's BAYC and MAYC NFTs also deprived Mr. Armijo of the
 6 commercialization rights he possessed in his underlying Bored Ape and Mutant Ape images. Mr.
 7 Armijo also lost the ability to earn future profits from his BAYC NFTs.

8 161. The theft of Mr. Armijo's BAYC and MAYC NFTs was the direct and proximate
 9 result of Defendants' failure to provide consumer protections and deter criminal activity in the NFT
 10 community.

11 162. Defendants had the resources necessary to deter or remedy the theft but neglected to
 12 implement security measures and invest in adequate customer service support.

13 163. Had Defendants remedied the deficiencies in their security processes and customer
 14 support services, they would have disincentivized the targeting of BAYC NFT owners and could
 15 have helped deter the attack on Mr. Armijo or adequately remedied the effects of such an attack.

16 *Defendants' Actions Harmed the NFT Community and all NFT Consumers*

17 164. Defendants' failure to implement adequate security measures and to deter the sale of
 18 stolen NFTs was detrimental to the NFT community and all NFT consumers.

19 165. Without robust theft protections, all NFT consumers who own valuable NFTs are
 20 targets for fraud and theft, and the NFT market is a haven for anonymous criminals.

21 166. Mainstream consumers are wary of participating in the NFT market without the basic
 22 safety and fraud protections consumers are accustomed to in comparable online marketplaces.

23 167. Nothing prevented Defendants from implementing security measures, including user
 24 verification and NFT screening procedures. Defendants chose to operate their platforms without such
 25 safeguards despite having the resources to put them in place.

26 168. Defendants' actions have directly fostered the free-for-all atmosphere prevalent in the
 27 NFT community that allows thieves to target NFT consumers with impunity. NFT consumers will
 28 continue to be at risk until Defendants implement adequate security measures.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT
(against BAYC)

169. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

170. A valid and enforceable contract exists between BAYC and Mr. Armijo.

171. BAYC extended an offer to Mr. Armijo to become a member of the BAYC club by purchasing a BAYC NFT, whether from BAYC directly or on the secondary market.

172. BAYC made this offer on its official Twitter account, wherein BAYC invites all people, including Mr. Armijo, to become a member of the BAYC club by “buy[ing] a Bored Ape or Mutant Ape on OpenSea.”¹⁹³

173. The offer is explained in further detail on BAYC’s official website, wherein BAYC explains, “When you buy a Bored Ape, you’re not simply buying an avatar or a provably-rare piece of art. You are gaining membership access to a club whose benefits and offerings will increase over time.”¹⁹⁴

174. Mr. Armijo accepted BAYC’s offer on three separate occasions: (1) on November 14, 2021, when he purchased Bored Ape #4329; (2) on November 15, 2021, when he purchased Mutant Ape #1819; and (3) on January 2, 2022, when he purchased Mutant Ape #7713. On each occasion paying valuable consideration, some of which was paid over to BAYC as a royalty, to join the BAYC club.

175. BAYC and Mr. Armijo intended to contract with each other, and promises were exchanged between the two parties.

¹⁹³ See @BoredApeYC, Twitter (last visited June 23, 2022), <https://twitter.com/BoredApeYC>.

¹⁹⁴ See Bored Ape Yacht Club, <https://boredapeyachtclub.com/#/home#buy-an-ape> (last visited June 23, 2022).

176. BAYC tacitly promised that upon receipt of the 2.5% royalty fee it is owed for each sale of a BAYC NFT, it would confer upon Mr. Armijo membership in the BAYC club along with all of the current and future benefits and offerings bestowed upon BAYC club members.

177. Mr. Armijo fully complied with his obligations under the agreement.

178. Mr. Armijo is the rightful owner of BAYC #4329, MAYC #1819, and MAYC #7713.

179. BAYC, on the other hand, has materially breached its obligations under the respective contract by, among other things, depriving Mr. Armijo of his club membership and refusing to confer upon him the benefits and offerings it promised to convey to him under the agreement outlined herein.

180. As a direct and proximate result of BAYC's material breach of the respective contract, Mr. Armijo has sustained damages and continues to sustain damages, including but not limited to, the loss of Mr. Armijo's membership in the BAYC club and the privileges associated with it (including but not limited to all incentives provided to club members since the theft of his BAYC NFTs.

181. As a result of BAYC's actions as described herein, it has been necessary for Mr. Armijo to retain the service of counsel to represent him in the above-entitled matter, and he is therefore entitled to reasonable attorney's fees and costs incurred herein.

SECOND CLAIM FOR RELIEF
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(against BAYC)

182. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

183. As a matter of Nevada law, every contract imposes upon the contracting parties the duty of good faith and fair dealing, which requires BAYC to refrain from acting in a way that injures or destroys Mr. Armijo's right to receive the benefits of the bargain he made under the respective contract, and instead, to act in a manner faithful to the purpose of the respective contract and within Mr. Armijo's justified expectations under the respective contract.

184. Mr. Armijo purchased three BAYC NFTS, entering into a respective contract with BAYC with the justified expectation that he would receive, among other things, membership in the

1 BAYC club along with all of the current and future benefits and offerings bestowed upon BAYC club
2 members so long as he did not sell, trade, transfer, or otherwise voluntarily dispose of the BAYC
3 NFTs.

4 185. Despite the theft of Mr. Armijo's three BAYC NFTs, Mr. Armijo remains the rightful
5 owner of the BAYC NFTs at issue.

6 186. Nevertheless, BAYC has breached the implied covenants of good faith and fair
7 dealing by, among other things, wrongfully depriving Mr. Armijo of his BAYC club membership in
8 favor of granting his BAYC club membership to the thief that stole Mr. Armijo's BAYC NFTs (or
9 his/her successor).

10 187. As a direct and proximate result of BAYC's breach of the implied covenant of good
11 faith and fair dealing in the respective contract, Mr. Armijo has sustained damages and continues to
12 sustain damages, including but not limited to, the loss of Mr. Armijo's membership in the BAYC
13 club and the privileges associated with it (including but not limited all incentives provided to club
14 members since the theft of his BAYC NFTs).

15 188. As a result of BAYC's actions as described herein, it has been necessary for Mr.
16 Armijo to retain the service of counsel to represent him in the above-entitled matter, and he is
17 therefore entitled to reasonable attorney's fees and costs incurred herein.

18 **THIRD CLAIM FOR RELIEF**
19 **NEGLIGENCE**
(against OpenSea and LooksRare)

20 189. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

21 190. OpenSea and LooksRare owed a duty to Mr. Armijo as an NFT consumer to exercise
22 reasonable care in monitoring their NFT marketplaces for stolen NFTs. This duty included, among
23 other things, designing, maintaining, and implementing adequate screening and verification processes
24 for any and all NFTs on their platforms to ensure that the NFTs uploaded to their marketplaces were
25 not the product of theft, fraud, or other illegal activities. OpenSea and LooksRare's duty to monitor
26 their platforms further included a duty to respond and act quickly when stolen NFTs were detected or
27 reported by users and to alert law enforcement officials of thefts that occurred on their platforms and
28 cooperate with law enforcement officials to retrieve stolen NFTs.

1 191. OpenSea and LooksRare additionally owed a duty to Mr. Armijo as an NFT consumer
2 to exercise reasonable care in providing adequate customer service for victims of theft or other illegal
3 activities that occurred on their platforms. This duty included, among other things, designing,
4 maintaining, and implementing effective and immediate reporting procedures to provide NFT
5 consumers with the ability to quickly report thefts and other illegal activity directly to competent
6 customer service agents employed by OpenSea and LooksRare. The duty to provide adequate
7 customer service further included a duty to provide timely, effective, and equal recourse to all NFT
8 consumers, including Mr. Armijo, who are victims of theft or other illegal activities on OpenSea and
9 LooksRare's platforms.

10 192. In a February 9, 2022 interview on "Twitter Spaces", OpenSea's co-founder, Alex
11 Atallah, acknowledged these duties by stating that OpenSea has "an obligation" to "immediately
12 protect users" and notify other platforms when a security issue is flagged.¹⁹⁵ That obligation was not
13 met here.

14 193. OpenSea has a special relationship with Mr. Armijo and all NFT consumers, and by
15 its actions has assumed a duty to Mr. Armijo and all NFT consumers. In the new and unregulated
16 world of NFT marketplaces, OpenSea has emerged as the giant of the industry with a near monopoly
17 on all NFT purchases and sales. OpenSea itself acknowledges its role as the industry leader and
18 recognizes its duty to create industry standards that keep consumers safe. Any individual who wishes
19 to buy, sell, or trade NFTs submits themselves to OpenSea's control, whether or not the transactions
20 actually occur on OpenSea's website due to OpenSea's dominance of the NFT community and the
21 industry standards it chooses to implement. Only OpenSea has the ability to implement effective
22 security measures on its platform that will preemptively deter and disincentivize theft, thereby
23 reducing the risk NFT consumers face and making valuable NFTs and those who own them less of a
24 target for thieves and hackers. Because Mr. Armijo's ability to provide for his own protection was
25 limited by the actions and nonactions of OpenSea, OpenSea owes Mr. Armijo, and all other NFT

26
27
28 ¹⁹⁵ Interview by Ohh Shiny with Alex Atallah, Co-Founder, OpenSea, on the OhhShiny Show
Twitter Space (Feb. 9, 2022).

1 consumers, a duty to provide protection against the easily foreseeable third-party attacks and thefts to
2 which NFT consumers are regularly subjected.

3 194. OpenSea further has a special relationship with Mr. Armijo because Mr. Armijo
4 submitted himself to OpenSea's control when he contacted OpenSea's customer service following
5 the theft of his BAYC NFTs. Mr. Armijo relied on OpenSea to promptly address the theft and
6 prohibit the sale of his valuable BAYC NFTs, and his ability to provide such protection for himself
7 was limited by OpenSea's lack of timely, responsive, and effective customer service. Only OpenSea
8 has the ability to implement effective customer service and security measures on its platform. As
9 such, OpenSea had and has a duty to take reasonable precautions and implement effective procedures
10 to protect Mr. Armijo, and others like him, from the easily foreseeable third-party attacks and thefts
11 to which NFT consumers are regularly subjected.

12 195. LooksRare has consistently stated its opposition to monitoring its platform and
13 providing security measures to deter or prohibit the sale of illegal NFTs in its marketplace.
14 LooksRare has further refused to provide any customer service or reporting mechanisms for victims
15 of theft or other illegal activities. LooksRare zealously maintains the anonymity of its cofounders and
16 management team, thus insulating LooksRare from accountability when its platform is used to
17 conduct illegal activity. These actions demonstrate LooksRare's premeditated intention to evade
18 responsibility and a dismissive approach to their duties and obligations. LooksRare has a financial
19 interest in facilitating the sale of NFTs on its platform, and therefore owed a duty to Mr. Armijo as an
20 NFT consumer to monitor its platform for stolen or otherwise illegal NFTs and to provide adequate
21 customer service and timely recourse to victims of illegal activity. That duty was not met here.

22 196. LooksRare has a special relationship with Mr. Armijo because Mr. Armijo submitted
23 himself to LooksRare's control when he attempted to contact LooksRare's customer service
24 following the theft of his BAYC NFTs only to discover that LooksRare's official policy is to refuse
25 all requests to intervene when a theft has occurred. Mr. Armijo relied on LooksRare to prohibit the
26 sale of his stolen BAYC NFTs, and his ability to provide such protection for himself was limited by
27 LooksRare's policy of refusing to provide any help at all to victims of theft. Only LooksRare has the
28 ability to implement theft deterrent measures and effective customer service on its platform. As such,

1 LooksRare had and has a duty to take reasonable precautions and implement effective procedures to
2 protect Mr. Armijo, and others like him, from the easily foreseeable third-party attacks and thefts to
3 which NFT consumers are regularly subjected.

4 197. OpenSea and LooksRare knew of the prevalence of NFT theft prior to the February 1,
5 2022, theft and subsequent sales of Mr. Armijo's BAYC NFTs.

6 198. As an NFT consumer, Mr. Armijo was the foreseeable and probable victim of any
7 inadequate monitoring, screening, security, and reporting procedures. OpenSea and LooksRare knew
8 of the significant and inherent risks in owning valuable NFTs and the likelihood that NFT consumers
9 would be preyed upon by hackers, scammers, and thieves.

10 199. OpenSea and LooksRare's own conduct created a foreseeable risk of harm to Mr.
11 Armijo as an NFT consumer. OpenSea and LooksRare took advantage of the lack of government
12 regulations and the philosophy of decentralization to refuse to implement any consumer safety
13 standards or theft deterrents. OpenSea's and LooksRare's actions have contributed to the free-for-all,
14 lawless nature of the NFT market, thus placing all NFT consumers, including Mr. Armijo, at
15 significant and foreseeable risk for being victimized by hackers, scammers, and thieves.

16 200. OpenSea and LooksRare breached their duties to Mr. Armijo as an NFT consumer to
17 exercise reasonable care in monitoring their NFT marketplaces for stolen NFTs by, among other
18 things: (a) failing to design, implement, and maintain adequate screening and verification processes
19 for any and all NFTs on their platforms; (b) failing to collect adequate identification information for
20 users of their platforms; (c) failing to respond immediately to reports of theft or other illegal activity
21 on their platforms; (d) failing to contact law enforcement about reported illegal activity or otherwise
22 cooperate with law enforcement to recover stolen NFTs.

23 201. OpenSea and LooksRare breached their duties to Mr. Armijo as an NFT consumer to
24 exercise reasonable care in providing adequate customer service for victims of theft or other illegal
25 activities that occurred on their platforms by, among other things: (a) failing to provide dedicated,
26 immediate, and easily accessible customer service; (b) failing to design, implement, and maintain
27 safe, effective, and immediate reporting procedures on their platforms to allow NFT consumers the
28 ability to report thefts and other illegal activity; (c) failing to provide timely, effective, and equal

1 recourse to all NFT consumers, including prohibiting the sale of stolen NFTs on their platforms,
2 participating in NFT recovery efforts, and providing incentives for later holders of stolen NFTs to
3 return them to their rightful owners.

4 202. As set out above, NFTs may be illegally and impermissibly sold, but those
5 transactions cannot occur absent negligent acts by OpenSea, LooksRare, and/or their employees.

6 203. But for OpenSea and LooksRare's breach of their duties of reasonable care owed to
7 Mr. Armijo, Mr. Armijo's NFTs would not have been impermissibly sold and transferred on
8 February 1, 2022. It was OpenSea's and LooksRare's breach of their duties—as they lacked adequate
9 verification and security parameters and allowed their platforms to be used as marketplaces for
10 illegally stolen NFTs—that caused Mr. Armijo to suffer significant harm. OpenSea's and
11 LooksRare's negligence was a direct and proximate cause of Mr. Armijo's resulting damages,
12 including but not limited to, the theft and loss of his property and its subsequent sale, the loss of his
13 legal interest in membership in the BAYC club and the privileges associated with it, and the damage
14 suffered due to the loss of his commercialization rights to the ape characters underlying his BAYC
15 NFTs.

16 204. Based on OpenSea's and LooksRare's actions and inactions as described herein,
17 OpenSea and LooksRare are guilty of oppression or malice, express or implied, and Mr. Armijo is
18 entitled to an award of punitive damages. In particular, OpenSea and LooksRare's negligent and
19 reckless conduct was intentionally undertaken with knowledge of the probable harmful consequences
20 and with a willful and deliberate failure to avoid the foreseeable consequences facing Mr. Armijo as
21 an NFT consumer as described herein. OpenSea and LooksRare acted with the intent to harm Mr.
22 Armijo, or with a conscious disregard for Mr. Armijo's rights and property as an NFT consumer,
23 thereby subjecting Mr. Armijo to cruel and unjust hardship as described herein.

24 205. As a result of OpenSea and LooksRare's actions as described herein, it has been
25 necessary for Mr. Armijo to retain the service of counsel to represent him in the above-entitled
26 matter, and he is therefore entitled to reasonable attorney's fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
NEGLIGENCE
(against BAYC)

206. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

207. BAYC owed a duty to Mr. Armijo as a BAYC club member to exercise reasonable care in monitoring and verifying the BAYC NFTs used to access its proprietary and exclusive BAYC club. This duty included ensuring that the BAYC NFTs used to access private benefits on the BAYC platform were not the product of theft or fraud and being improperly used to gain access. BAYC's duty to monitor its club further included a duty to respond and act quickly when stolen BAYC NFTs were detected or reported by users, and to alert law enforcement officials of reported thefts of BAYC NFTS and cooperate with law enforcement officials to retrieve the stolen BAYC NFTs.

208. BAYC further owed a duty to Mr. Armijo as a BAYC club member to provide adequate customer service and reporting measures that would allow victims to quickly and safely report thefts or other illegal activity regarding BAYC NFTs to competent customer service agents employed by BAYC.

209. BAYC has a special relationship with Mr. Armijo and all members of the BAYC club. BAYC is a relatively small and exclusive club. Upon information and belief, BAYC controls all aspects of club membership. The many benefits and opportunities, both social and economic, made available to BAYC club members is strictly limited by BAYC. However, those same benefits and opportunities are also what make BAYC NFTs so valuable and attractive to others, including thieves. Because BAYC holds complete control over the gatekeeping function and distribution of benefits to its BAYC club, any person who becomes a BAYC club member (as Mr. Armijo did when he purchased his BAYC NFTs) submits themselves to BAYC's control. Mr. Armijo relied on BAYC's ability to monitor the BAYC club and prohibit access that is predicated on a stolen BAYC NFT. Only BAYC has the ability to implement and enforce effective security measures in its BAYC club and across the BAYC platforms that will preemptively deter and disincentivize theft, thereby reducing the risk that BAYC NFT owners face and making them less of a target for thieves and hackers. Because Mr. Armijo's ability to provide for his own protection was limited by the actions and nonactions of BAYC, BAYC owes Mr. Armijo, and all other BAYC club members, a duty to provide protection

1 against the easily foreseeable third-party attacks and thefts to which BAYC club members are
2 regularly subjected.

3 210. BAYC knew of the prevalence of fraudulent transfers and thefts of its BAYC NFTs.
4 Many illegal thefts and transfers of BAYC NFTs have been highly publicized across the internet and
5 garnered national media attention. BAYC has a financial interest in facilitating the trade of BAYC
6 NFTs, as it profits off each sale of its BAYC NFTs. Therefore, BAYC owed a duty to Mr. Armijo as
7 a BAYC club member to allow proper reporting and security measures in order to deter the targeting
8 of BAYC club members by hackers, scammers, and thieves. That duty was not met.

9 211. BAYC breached its duties to Mr. Armijo as a BAYC club member by, among other
10 things: (a) failing to design, implement, and maintain adequate security and verification measures to
11 prohibit access of BAYC NFTs to the BAYC club that were the product of theft or other illegal
12 activities; (b) failing to provide dedicated, immediate, and easily accessible customer service; (c)
13 failing to design, implement, and maintain safe, effective, and immediate reporting procedures to
14 allow BAYC club members the ability to report thefts and other illegal activity; (d) failing to provide
15 timely, effective, and equal recourse to all NFT consumers, including prohibiting the use of stolen
16 BAYC NFTs on their platforms, and participating in BAYC NFT recovery efforts.

17 212. As set out above, BAYC NFTs may be illegally stolen and improperly sold or traded,
18 but the thief's (and its successors) accessing and using the benefits of BAYC club membership
19 provided by BAYC on its platform cannot occur absent negligent acts by BAYC and/or its
20 employees.

21 213. But for BAYC's breach of its duty of reasonable care owed to Mr. Armijo as a BAYC
22 club member, Mr. Armijo's BAYC NFTs would not have been a target for thieves because their
23 utility would have been significantly diminished. It was BAYC's breach of its duties that caused Mr.
24 Armijo to lose access and benefits provided by BAYC to its BAYC NFT owners. BAYC's
25 negligence was a direct and proximate cause of Mr. Armijo's resulting damages, including but not
26 limited to, the theft and loss of his property and its subsequent sale, the loss of his legal interest in
27 membership in the BAYC club and the privileges associated with it, and the damage suffered due to
28 the loss of his commercialization rights to the ape characters underlying his BAYC NFTs.

214. Based on BAYC's actions and inactions as described herein, BAYC is guilty of oppression or malice, express or implied, and Mr. Armijo is entitled to an award of punitive damages. In particular, BAYC's negligent and reckless conduct was intentionally undertaken with knowledge of the probable harmful consequences and with a willful and deliberate failure to avoid the foreseeable consequences facing Mr. Armijo as a BAYC club member as described herein. BAYC acted with the intent to harm Mr. Armijo, or with a conscious disregard for Mr. Armijo's rights and property as a BAYC club member, thereby subjecting Mr. Armijo to cruel and unjust hardship as described herein.

215. As a result of BAYC's actions as described herein, it has been necessary for Mr. Armijo to retain the service of counsel to represent him in the above-entitled matter, and he is therefore entitled to reasonable attorney's fees and costs incurred herein.

FIFTH CLAIM FOR RELIEF
NEGLIGENT SUPERVISION AND TRAINING
 (against OpenSea and LooksRare)

216. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

217. OpenSea and LooksRare owed a duty to Mr. Armijo as an NFT consumer to exercise reasonable care in supervising and training their employees to timely respond and react to reports from NFT consumers. OpenSea and LooksRare owed a duty to Mr. Armijo as an NFT consumer to safeguard and protect any and all NFTs upon reports of theft and to prohibit said NFTs from being improperly used, sold, or transferred to unauthorized parties on their platforms. This duty included OpenSea and LooksRare's training, instructing, and supervising its employees to adhere to basic monitoring, security, reporting, and response obligations as is common practice in the industry of online marketplaces.

218. OpenSea and LooksRare were aware of the ability of their employees to freeze certain NFTs, as well as the ability to arbitrarily flag specific tickets submitted by users in order to move them up in the queue, thus allowing them to receive a quicker response. OpenSea and LooksRare's knowledge is apparent from their company statements regarding security and reporting as set forth above.

///

1 219. OpenSea and its employees currently utilize a customer service policy of allowing
2 more than a week to respond to help tickets. OpenSea is aware that such a time frame is insufficient
3 and meaningless to NFT consumers who have filed reports, including Mr. Armijo.

4 220. LooksRare and its employees have disclaimed all customer service and refuses to
5 freeze problematic NFTs on its platform. LooksRare is aware that this decision does nothing to curb
6 the incentive for hackers, scammers, and thieves to target NFT consumers who own valuable NFTs.

7 221. OpenSea and LooksRare knew that fraudulent and stolen NFTs were being sold
8 regularly on their platforms. OpenSea and LooksRare also knew that these types of digital assets
9 were attractive to foreseeable bad actors and that “fire sales” are typically conducted on their
10 platforms almost immediately following the NFT’s theft.

11 222. OpenSea and LooksRare breached their duty to supervise and train their employees to
12 safeguard and protect any and all NFTs on their platforms by not requiring employees to adhere to
13 adequate and basic monitoring, verification, security, reporting, and response measures. As set forth
14 above, the illegal trades and sales of NFTs cannot occur without knowledge, complicity, or
15 negligence by OpenSea and LooksRare employees.

16 223. OpenSea and LooksRare knew the supervision, training, and monitoring of their
17 employees was inadequate because sales nearly identical to those successfully executed involving
18 Mr. Armijo’s NFTs occurred on multiple prior occasions. OpenSea and LooksRare employees failed
19 to adequately verify, monitor, and respond to reports of improper and illegal sales. Multiple other
20 NFT consumers have stated they filed help tickets with OpenSea and have not heard back as of three
21 weeks of their initial reporting. Such non-response on behalf of OpenSea is negligent.

22 224. But for OpenSea and LooksRare’s wrongful and negligent breach of its duties to
23 supervise, train, and monitor their employees, Mr. Armijo’s BAYC NFTs would not have been
24 subsequently sold to unauthorized individuals on their platforms. OpenSea and LooksRare’s
25 negligence in supervising, training, and monitoring their employees was a direct and proximate cause
26 of Mr. Armijo’s resulting damages, including but not limited to, the theft and loss of his property and
27 its subsequent sale, the loss of his legal interest in membership in the BAYC club and the privileges
28

1 associated with it, and the damage suffered due to the loss of his commercialization rights to the ape
2 characters underlying his BAYC NFTs.

3 225. Based on Open Sea and LooksRare's actions and inactions as described herein, Open
4 Sea and LooksRare are guilty of oppression or malice, express or implied, and Mr. Armijo is entitled
5 to an award of punitive damages. In particular, Open Sea and LooksRare's negligent and reckless
6 conduct was intentionally undertaken with knowledge of the probable harmful consequences and
7 with a willful and deliberate failure to avoid the foreseeable consequences facing Mr. Armijo as an
8 NFT consumer as described herein. Open Sea and LooksRare acted with the intent to harm Mr.
9 Armijo, or with a conscious disregard for Mr. Armijo's rights and property as an NFT consumer,
10 thereby subjecting Mr. Armijo to cruel and unjust hardship as described herein.

11 226. As a result of Open Sea and LooksRare's actions as described herein, it has been
12 necessary for Mr. Armijo to retain the service of counsel to represent him in the above-entitled
13 matter, and he is therefore entitled to reasonable attorney's fees and costs incurred herein.

14 **SIXTH CLAIM FOR RELIEF**
15 **NEGLIGENT HIRING**
(against OpenSea and LooksRare)

16 227. Plaintiff realleges and incorporates the foregoing paragraphs, as if set forth herein.

17 228. OpenSea and LooksRare owed a duty to Mr. Armijo as an NFT consumer to hire a
18 sufficient number of competent, honest, and ethical employees to respond to reports and to safeguard
19 and protect any and all NFTs on their platforms. OpenSea and LooksRare also owed a duty to Mr.
20 Armijo as an NFT consumer to exercise reasonable care in creating dedicated security and customer
21 service departments and hiring sufficient numbers of competent employees that would allow them to
22 effectively perform their duties.

23 229. OpenSea and LooksRare knew that the NFTs being sold or traded on their platforms,
24 including Mr. Armijo's, were valuable and required time sensitive responses. OpenSea and
25 LooksRare also knew that this type of information was attractive to foreseeable bad actors who
26 subsequently sell stolen NFTs on OpenSea and LooksRare's marketplaces. OpenSea and LooksRare
27 further knew that their failure to hire a sufficient number of security and customer service employees
28

1 was inadequate because of the numerous previous attacks involving similar facts to those set forth
2 above.

3 230. OpenSea and LooksRare breached their duties by, among other things, failing to hire
4 sufficient numbers of competent security and customer service employees who would safeguard and
5 protect any and all NFTs on their platforms.

6 231. The subsequent sale of Mr. Armijo's NFTs could not have occurred without the
7 negligence of OpenSea and LooksRare employees.

8 232. The employee(s) who failed to monitor and verify the NFTs on OpenSea's platform
9 did not live up to OpenSea's purported security standards. Additionally, the LooksRare employee(s)
10 who failed to monitor and verify the NFTs on the LooksRare platform were negligent as LooksRare
11 fails to claim any responsibility for illegal sales taking place on its platform.

12 233. But for OpenSea and LooksRare's wrongful and negligent breach of their duties to
13 hire sufficient numbers of competent and ethical security and customer service employees, Mr.
14 Armijo's NFTs would have been timely frozen, and they would not have been sold on those either
15 OpenSea or LooksRare's platforms. OpenSea's and LooksRare's negligence was a direct and
16 proximate cause of Mr. Armijo's resulting damages, including but not limited to, the theft and loss of
17 his property and its subsequent sale, the loss of his legal interest in membership in the BAYC club
18 and the privileges associated with it, and the damage suffered due to the loss of his
19 commercialization rights to the ape characters underlying his BAYC NFTs.

20 234. Based on Open Sea and LooksRare's actions and inactions as described herein, Open
21 Sea and LooksRare are guilty of oppression or malice, express or implied, and Mr. Armijo is entitled
22 to an award of punitive damages. In particular, Open Sea and LooksRare's negligent and reckless
23 conduct was intentionally undertaken with knowledge of the probable harmful consequences and
24 with a willful and deliberate failure to avoid the foreseeable consequences facing Mr. Armijo as an
25 NFT consumer as described herein. Open Sea and LooksRare acted with the intent to harm Mr.
26 Armijo, or with a conscious disregard for Mr. Armijo's rights and property as an NFT consumer,
27 thereby subjecting Mr. Armijo to cruel and unjust hardship as described herein.

28 ///

235. As a result of Open Sea and LooksRare's actions as described herein, it has been necessary for Mr. Armijo to retain the service of counsel to represent him in the above-entitled matter, and he is therefore entitled to reasonable attorney's fees and costs incurred herein.

JURY TRIAL DEMAND

236. Mr. Armijo hereby demands a trial by jury on all claims so triable.

REQUEST FOR RELIEF

Plaintiff Robert Armijo demands judgment against Defendants as follows:

1. For general and compensatory damages against all Defendants in an amount to be determined at trial;
2. For exemplary and punitive damages against all Defendants in an amount to be determined at trial;
3. For reasonable attorneys' fees and costs of suit in this action against all Defendants;
4. For pre- and post-judgment interest as allowed by law against all Defendants; and
5. Any and all other relief this Court deems just and proper.
6. Against Defendant BAYC:
 - a. For reinstatement into the BAYC club;
 - b. For provision of all the benefits and opportunities granted to BAYC club members conveyed since the time of the theft of Mr. Armijo's BAYC NFTs and all other forthcoming benefits and opportunities that will be offered to BAYC club members in the future;
 - c. For the revocation of BAYC club access granted to BAYC #4329, MAYC #1819, and MAYC #7713 until such time as they can be returned to Mr. Armijo;
 - d. For the revocation of the copyright license granted to BAYC #4329, MAYC #1819, and MAYC #7713 until such time as they can be returned to Mr. Armijo;
 - e. For the digital images paired with BAYC #4329, MAYC #1819, and MAYC #7713 to be decoupled from their underlying NFT hash code until such time as they can be returned to Mr. Armijo;
 - f. For the following technical solutions:

- 1 (i) If the BAYC NFTs at issue cannot be returned to Mr. Armijo, three new
2 BAYC NFTs of equal value be created and given to Mr. Armijo, along
3 with all attendant rights and benefits that accompany BAYC NFT
4 ownership and club membership; or
- 5 (ii) If the BAYC NFTs at issue cannot be returned to Mr. Armijo, BAYC
6 #4329, MAYC #1819, and MAYC #7713 be “burned” and then reissued to
7 Mr. Armijo, along with all attendant rights and benefits that accompany
8 BAYC NFT ownership and club membership.

9 DATED this 24th day of June 2022.

ARMSTRONG TEASDALE LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of ARMSTRONG TEASDALE LLP, and that the foregoing document:

☒ was served via electronic service to the address(es) shown below:

John Patrick Desmond jdesmond@dickinsonwright.com,
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☒ will be served via the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first-class postage prepaid, dated June 27, 2022, and to the address(es) shown below:

LooksRare, Ltd.
Chase Business Center
39-41 Chase Side
London, United Kingdom, N14 5BP

Date: 06/24/2022

/s/Allie Villarreal

An employee of Armstrong Teasdale LLP